

Exhibit 5

1 IN THE UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 SAN FRANCISCO DIVISION

4 -----x
5 IN RE: CATHODE RAY TUBE (CRT)
6 ANTITRUST LITIGATION

7 No.: 3:07-cv-05944 SC--MDL No. 1917

8 Individual Action No.: 3:11-cv-05514

9 -----x
10 FRIDAY, JULY 25, 2014

11 9:08 a.m.

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16 Video Deposition of WARREN MANN, III, held
17 at the offices of WHITE & CASE, LLP, 1155
18 Avenue of the Americas, New York, New York
19 10036, before Suzanne J. Stotz, a Certified
20 Court Reporter, and a Notary Public of the
21 State of New York.

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<p style="text-align: center;">2</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 BOIES, SCHILLER & FLEXNER, LLP</p> <p>4 Attorneys for the Witness and</p> <p>5 Various Direct Action Plaintiffs</p> <p>6 30 South Pearl Street</p> <p>7 11th Floor</p> <p>8 Albany, New York 12207</p> <p>9 (518) 434-0600</p> <p>10 jdew@bsflp.com</p> <p>11 BY: JACK DEW, ESQ.</p> <p>12</p> <p>13 WHITE & CASE, LLP</p> <p>14 Attorneys for the Defendant Toshiba</p> <p>15 701 Thirteenth Street, NW</p> <p>16 Washington, DC 20005</p> <p>17 (202) 626-3696</p> <p>18 (202) 626-3624</p> <p>19 alau@whitecase.com</p> <p>20 twu@whitecase.com</p> <p>21 BY: LUCIUS B. (ALBIE) LAU, ESQ.</p> <p>22 TSUNG-HUI (DANNY) WU, ESQ.</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: center;">4</p> <p>1 APPEARANCES: (Continued)</p> <p>2</p> <p>3 (Telephonic)</p> <p>4 KAG LAW GROUP</p> <p>5 Attorneys for the Indirect Purchaser</p> <p>6 Plaintiffs</p> <p>7 P.O. Box 210135</p> <p>8 San Francisco, California 94121</p> <p>9 (415) 221-5763</p> <p>10 sylviekern@yahoo.com</p> <p>11 BY: SYLVIE K. KERN, ESQ.</p> <p>12</p> <p>13</p> <p>14 ALSO PRESENT: Thomas Devine, Videographer</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: center;">3</p> <p>1 APPEARANCES: (Continued)</p> <p>2</p> <p>3 (Telephonic)</p> <p>4 KIRKLAND & ELLIS, LLP</p> <p>5 Attorneys for Hitachi entities</p> <p>6 555 California Street</p> <p>7 Suite 2700</p> <p>8 San Francisco, California 94104</p> <p>9 (415) 439-4790</p> <p>10 Sarah.Stock@kirkland.com</p> <p>11 BY: SARAH STOCK, ESQ.</p> <p>12</p> <p>13 (Telephonic)</p> <p>14 BAKER BOTTS, LLP</p> <p>15 Attorneys for the Philips entities</p> <p>16 30 South Pearl Street</p> <p>17 1299 Pennsylvania Ave., NW</p> <p>18 Washington, DC 20004</p> <p>19 (202) 639-7766</p> <p>20 tiffany.gelott@bakerbotts.com</p> <p>21 BY: TIFFANY GELOTT, ESQ.</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: center;">5</p> <p>1 I N D E X</p> <p>2</p> <p>3 EXAMINATION</p> <p>4 Page No.</p> <p>5 WILLIAM MANN, III</p> <p>6 BY MR. LAU 8</p> <p>7 BY MS. STOCK 125</p> <p>8</p> <p>9</p> <p>10 E X H I B I T S</p> <p>11</p> <p>12 Exhibit</p> <p>13 Name Description Page No.</p> <p>14 4730 E-mail 79</p> <p>15 4731 Common Stock Reconciliation 104</p> <p>16 4732 E-mail 125</p> <p>17</p> <p>18</p> <p>19 (Exhibits attached to transcript.)</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

<p style="text-align: center;">6</p> <p>09:08 1 THE VIDEOGRAPHER: Good morning.</p> <p>09:08 2 The date is July 25, 2014, and the time is</p> <p>09:08 3 approximately 9:08 a.m.</p> <p>09:08 4 We are located at the offices of</p> <p>09:08 5 White & Case, LLP, 1155 Avenue of the</p> <p>09:08 6 Americas, New York, New York. We are</p> <p>09:08 7 taking the deposition of Warren Mann, In</p> <p>09:08 8 Re: Cathode Ray Tube Antitrust Litigation</p> <p>09:08 9 in the US District Court, Northern</p> <p>09:08 10 District of California, San Francisco</p> <p>09:08 11 Division, Case No. 07-cv-05944 SC-MLD</p> <p>09:09 12 [sic] No. 1917.</p> <p>09:09 13 My name is Thomas Devine, and I'm</p> <p>09:09 14 the video specialist with Barkley</p> <p>09:09 15 Reporting. The court reporter is Suzanne</p> <p>09:09 16 Stotz also with Barkley Reporting.</p> <p>09:09 17 At this time I would like to have</p> <p>09:09 18 the attorneys please introduce themselves</p> <p>09:09 19 for the record. Please state your name,</p> <p>09:09 20 the firm with which you are affiliated,</p> <p>09:09 21 and whom you represent, after which the</p> <p>09:09 22 court reporter will swear in the witness</p> <p>09:09 23 and we may proceed.</p> <p>09:09 24 MR. LAU: My name is Albie Lau.</p> <p>09:09 25 I'm with the law firm of White & Case, and</p>	<p style="text-align: center;">8</p> <p>1 WILLIAM MANN, III,</p> <p>2 909 Lake Carolyn Pkwy, Suite 900, Irving, Texas</p> <p>3 75039, having first been duly sworn by a Notary</p> <p>4 Public, was examined and testified as follows:</p> <p>5</p> <p>6 EXAMINATION BY</p> <p>7 MR. LAU:</p> <p>09:10 8 Q. Good morning. Mr. Mann.</p> <p>09:10 9 A. Good morning, Albie.</p> <p>09:10 10 Q. Have you ever been deposed before?</p> <p>09:10 11 A. I have.</p> <p>09:10 12 Q. How many times?</p> <p>09:10 13 A. Three or four.</p> <p>09:10 14 Q. Can you describe those three or</p> <p>09:10 15 four times for me, please?</p> <p>09:10 16 A. Yes. I was deposed by the same</p> <p>09:10 17 group regarding the flat panel element of this</p> <p>09:11 18 case, LCD plasma.</p> <p>09:11 19 I was deposed for a family dispute</p> <p>09:11 20 regarding my mother's trust fund. And I</p> <p>09:11 21 believe I was deposed in the ancient days for a</p> <p>09:11 22 distributor lawsuit when I was with Maxell</p> <p>09:11 23 Corporation.</p> <p>09:11 24 Q. Any other times?</p> <p>09:11 25 A. Not that I can recall.</p>
<p style="text-align: center;">7</p> <p>09:09 1 I represent the Toshiba defendants.</p> <p>09:09 2 MR. WU: My name is Danny Wu, also</p> <p>09:09 3 with White & Case.</p> <p>09:09 4 MR. DEW: And Jack Dew with Boies,</p> <p>09:09 5 Schiller & Flexner representing various</p> <p>09:09 6 direct action plaintiffs and Mr. Mann.</p> <p>09:09 7 THE VIDEOGRAPHER: And on the</p> <p>09:09 8 telephone.</p> <p>09:09 9 MS. KERN: This is Sylvie Kern, KAG</p> <p>09:09 10 Law Group, for the indirect purchaser</p> <p>09:09 11 plaintiffs.</p> <p>09:09 12 MS. GELOTT: This is Tiffany Gelott</p> <p>09:10 13 with Baker Botts on behalf of the Philips</p> <p>09:10 14 defendants.</p> <p>09:10 15 MS. STOCK: This is Sarah Stock</p> <p>09:10 16 with Kirkland & Ellis for the defendant</p> <p>09:10 17 Hitachi Limited, Hitachi America Limited,</p> <p>09:10 18 Hitachi Asia Limited, Hitachi Display</p> <p>09:10 19 Limited, and Hitachi Electronic Devices</p> <p>09:10 20 USA.</p> <p>21 THE VIDEOGRAPHER: Thank you.</p> <p>22 Suzanne, would you please swear in the</p> <p>23 witness.</p> <p>24</p> <p>25</p>	<p style="text-align: center;">9</p> <p>09:11 1 Q. Okay. Have you ever testified in</p> <p>09:11 2 court?</p> <p>09:11 3 A. Yes.</p> <p>09:11 4 Q. How many times?</p> <p>09:11 5 A. I can only remember the one, and</p> <p>09:11 6 that had to do with the -- my mother's trust</p> <p>09:11 7 litigation.</p> <p>09:11 8 Q. Okay. I'm going to ask you a</p> <p>09:11 9 series of questions today, and I want to ask my</p> <p>09:11 10 questions in a way that you understand. So if</p> <p>09:12 11 I ask a question, Mr. Mann, and you don't</p> <p>09:12 12 understand it, please let me know, okay?</p> <p>09:12 13 A. I will.</p> <p>09:12 14 Q. And if you -- is it -- would it be</p> <p>09:12 15 fair for me to conclude that if you don't ask</p> <p>09:12 16 for clarification, that you do understand my</p> <p>09:12 17 questions; would that be fair?</p> <p>09:12 18 A. Yes.</p> <p>09:12 19 Q. Okay. From time to time, you may</p> <p>09:12 20 hear objections this morning either from your</p> <p>09:12 21 attorney, Mr. Dew, or possibly from the</p> <p>09:12 22 attorneys on the telephone. They're just</p> <p>09:12 23 trying to preserve arguments for the record.</p> <p>09:12 24 I do expect you to answer the</p> <p>09:12 25 questions after you receive the -- after you</p>

<p style="text-align: center;">10</p> <p>09:12 1 hear the objections.</p> <p>09:12 2 It's possible, however, that one of</p> <p>09:12 3 my questions might call for the revelation of</p> <p>09:12 4 some sort of attorney/client privilege or</p> <p>09:12 5 attorney work product, in which case your</p> <p>09:12 6 attorney's going to instruct you not to answer.</p> <p>09:12 7 But barring that instruction, I am going to</p> <p>09:12 8 expect full and complete answers to my</p> <p>09:12 9 questions today. Is that fine by you?</p> <p>09:12 10 A. Yes.</p> <p>09:12 11 Q. Okay. Is there anything that would</p> <p>09:12 12 prevent you from testifying today? An illness?</p> <p>09:13 13 Not feeling well?</p> <p>09:13 14 A. No.</p> <p>09:13 15 Q. Okay. Did you do anything to</p> <p>09:13 16 prepare for today's deposition?</p> <p>09:13 17 A. I met with Mr. Dew yesterday</p> <p>09:13 18 afternoon.</p> <p>09:13 19 Q. For how long?</p> <p>09:13 20 A. An hour, a little more maybe.</p> <p>09:13 21 Q. Did you -- did the two of you review</p> <p>09:13 22 any documents during this meeting?</p> <p>09:13 23 A. No.</p> <p>09:13 24 Q. Separately from meeting with</p> <p>09:13 25 Mr. Dew, did you meet with anyone else?</p>	<p>09:14 1 Association Television Merchants is a good</p> <p>09:14 2 guess.</p> <p>09:14 3 Q. And for what period of time?</p> <p>09:14 4 A. From October of 1992 until June of</p> <p>09:14 5 1999.</p> <p>09:15 6 Q. And what position did you hold at</p> <p>09:15 7 NATM?</p> <p>09:15 8 A. I was the group director.</p> <p>09:15 9 Q. And what was the responsibilities</p> <p>09:15 10 of group director?</p> <p>09:15 11 A. Negotiating on behalf of the</p> <p>09:15 12 membership, communication, coordination between</p> <p>09:15 13 the different retailers, show events, trade</p> <p>09:15 14 show.</p> <p>09:15 15 Q. Now, before working at NATM, where</p> <p>09:15 16 were you employed?</p> <p>09:15 17 A. I worked for Sansui Corporation.</p> <p>09:15 18 Q. And where -- where was this job</p> <p>09:15 19 located at?</p> <p>09:15 20 A. This was in Moonachie, New Jersey.</p> <p>09:15 21 Q. What was your title?</p> <p>09:15 22 A. I was senior vice-president sales</p> <p>09:15 23 and marketing.</p> <p>09:15 24 Q. What were your responsibilities?</p> <p>09:15 25 A. I was the senior American in charge</p>
<p style="text-align: center;">11</p> <p>09:13 1 A. Regarding this meeting, no.</p> <p>09:13 2 Q. Did you have any telephone calls</p> <p>09:13 3 with anyone concerning this deposition?</p> <p>09:13 4 A. No.</p> <p>09:13 5 Q. Okay. Did you review any documents</p> <p>09:13 6 at all in preparation for today's deposition?</p> <p>09:13 7 A. No.</p> <p>09:13 8 Q. Have you brought any documents with</p> <p>09:13 9 you today?</p> <p>09:13 10 A. No.</p> <p>09:13 11 Q. Okay. During what time period were</p> <p>09:14 12 you employed by MARTA?</p> <p>09:14 13 A. June of 1999 through January of</p> <p>09:14 14 2006.</p> <p>09:14 15 Q. Now, before coming to MARTA, where</p> <p>09:14 16 were you employed?</p> <p>09:14 17 A. I worked for the NATM Buying</p> <p>09:14 18 Corporation. That was in Manhattan, One Penn</p> <p>09:14 19 Plaza.</p> <p>09:14 20 Q. Can you say that word again? I</p> <p>09:14 21 don't think I understood it.</p> <p>09:14 22 A. The company is NATM, N-A-T-M.</p> <p>09:14 23 Q. Is that an acronym?</p> <p>09:14 24 A. It is. I don't -- no one's quite</p> <p>09:14 25 sure what it stands for, but National</p>	<p style="text-align: center;">13</p> <p>09:16 1 of developing, maintaining sales relationships,</p> <p>09:16 2 selling product, leading a team of salespeople,</p> <p>09:16 3 working with retailers, distributors.</p> <p>09:16 4 Q. When you first became employed by</p> <p>09:16 5 MARTA in June of 1999, what was your first job</p> <p>09:16 6 title?</p> <p>09:16 7 A. It was executive director.</p> <p>09:16 8 Q. Did that job title change at all</p> <p>09:16 9 during your tenure at MARTA?</p> <p>09:16 10 A. No.</p> <p>09:16 11 Q. What were your responsibilities as</p> <p>09:16 12 executive director?</p> <p>09:16 13 A. I did the same things that I did</p> <p>09:16 14 for NATM. In addition to that, we were</p> <p>09:16 15 involved in billing process. I was involved in</p> <p>09:16 16 bringing new members into the group. It was a</p> <p>09:17 17 similar type of organization. The difference</p> <p>09:17 18 was that I was now the person in charge. At</p> <p>09:17 19 NATM I was the No. 2 guy.</p> <p>09:17 20 Q. And then you left MARTA in January</p> <p>09:17 21 2006; is that right?</p> <p>09:17 22 A. Right.</p> <p>09:17 23 Q. And why did you leave?</p> <p>09:17 24 A. I was terminated.</p> <p>09:17 25 Q. Why were you terminated?</p>

<p style="text-align: center;">14</p> <p>09:17 1 A. The group had -- the board had 09:17 2 decided to join, make an alliance, they called 09:17 3 it, with another buying group. 09:17 4 Q. What was the name of the other 09:17 5 buying group? 09:17 6 A. These days it's probably known best 09:17 7 as Brand Source. It was also known as AVB. 09:17 8 Q. Was it known as AVB back in January 09:17 9 of 2006? 09:17 10 A. It was. 09:18 11 Q. So why did the -- the alliance with 09:18 12 this other buying group lead to your 09:18 13 termination? 09:18 14 A. I was opposed to MARTA giving up 09:18 15 its independence. 09:18 16 Q. So you thought that the -- well, 09:18 17 let me take a step back. Why were you opposed? 09:18 18 A. There were numerous reasons, but 09:18 19 the basic premise was that because MARTA was 09:18 20 now going to be -- MARTA was about almost a 09:18 21 \$2-billion organization joining with a 09:18 22 \$2-and-a-half-billion organization; and there 09:18 23 were some on board who thought that because 09:18 24 there was now more buying power, that they 09:19 25 could get better programs. I didn't think that</p>	<p>09:20 1 BY MR. LAU: 09:20 2 Q. Okay. As we sit here today, 09:20 3 Mr. Mann, do you have any sort of affiliation 09:20 4 with MARTA at all? 09:20 5 A. Not as a buying group, I do not. 09:20 6 Q. How about other than as a buying 09:20 7 group, any other affiliations? 09:20 8 A. The company that I work for now 09:20 9 sells extended warranties. My job is to build 09:20 10 that business with independent dealers. 09:20 11 Currently, I'm not in negotiation with any 09:20 12 MARTA member I don't think; and I had no 09:20 13 conversations, nor do I intend to have any 09:21 14 conversations with MARTA as a buying group. 09:21 15 Q. Okay. And you mentioned your 09:21 16 current employer. What's your current 09:21 17 employer? 09:21 18 A. New Leaf Service Contracts, LLC. 09:21 19 Q. I think you said that that company 09:21 20 is involved in providing extended warranties; 09:21 21 is that correct? 09:21 22 A. That's correct. 09:21 23 Q. Okay. When you were terminated by 09:21 24 MARTA in January 2006, do you think you were 09:21 25 treated fairly by MARTA at that time?</p>
<p style="text-align: center;">15</p> <p>09:19 1 that was correct. 09:19 2 Q. So you expressed this opinion to 09:19 3 the board, correct? 09:19 4 A. I did. 09:19 5 Q. And how did the board react? 09:19 6 A. Well, they got rid of me; so I 09:19 7 guess they didn't agree. 09:19 8 Q. When you were terminated, were you 09:19 9 given any sort of severance package? 09:19 10 A. Initially, I was supposed to have 09:19 11 been; but the conditions were that I couldn't 09:19 12 speak with anyone. And I had a hundred 09:19 13 members. I spoke with some of them. And when 09:19 14 that was discovered, they stopped paying me. 09:19 15 So I was not paid severance. 09:19 16 Q. Is there anything, any agreement 09:19 17 between you and MARTA that would prevent you 09:19 18 from testifying fully and accurately today? 09:20 19 MR. DEW: Just objection to the 09:20 20 extent that that agreement is based on any 09:20 21 privilege discussions with attorneys. You 09:20 22 should not discuss those discussions. 09:20 23 THE WITNESS: There were no 09:20 24 attorney discussions. And no, there's 09:20 25 nothing that precludes me from testifying.</p>	<p style="text-align: center;">17</p> <p>09:21 1 A. No. 09:21 2 Q. Why not? 09:21 3 A. What I explained to the board was 09:21 4 that certain things would happen and they 09:21 5 happened. The group splintered, more than half 09:21 6 of the volume of that group was gone within a 09:21 7 year; they left to join another group. I told 09:21 8 them if they felt that they should align with 09:21 9 somebody, that they probably should talk to the 09:21 10 other buying groups. There was a bigger one 09:22 11 around nationwide; but the board chairman was 09:22 12 opposed to that, and he was able to muster 09:22 13 sufficient support that they didn't do that. 09:22 14 So they acted very quickly. 09:22 15 They actually stopped my 09:22 16 involvement with the group in December of 2005 09:22 17 and had me shut down the office in New Jersey 09:22 18 and all of this led to no gain that I could see 09:22 19 for any of the membership; and my mandate was 09:22 20 to help the dealers get better programs, make 09:22 21 more money, order volume, and generally be 09:22 22 better retailers than they could be on their 09:22 23 own. 09:22 24 In my opinion, what they were doing 09:22 25 was not going to help any of those things. And</p>

<p style="text-align: center;">18</p> <p>09:23 1 I think in retrospect I could make a pretty 09:23 2 good case that it didn't. 09:23 3 Q. Now, you were discussing the 09:23 4 alliance with AVB. You described AVB as 09:23 5 another buying group. Do you remember that? 09:23 6 A. Yes. 09:23 7 Q. Would that be a fair description of 09:23 8 what MARTA was doing? Would it be fair to say 09:23 9 that MARTA, during your time with MARTA, was a 09:23 10 buying group? 09:23 11 A. Yes. 09:23 12 Q. What is the role of a buying group? 09:23 13 A. It varies. The original premise 09:23 14 back when these were first formed, which was in 09:23 15 the '50s and '60s, was that the independent 09:23 16 dealer in Detroit was a big fish in Detroit but 09:23 17 didn't really appear on the radar for 09:23 18 manufacturing. 09:23 19 But if you could get the big guy in 09:23 20 Detroit and the big guy in Cleveland and 09:23 21 Chicago and you could kind of bolt them all 09:23 22 together and get them to work together, you 09:24 23 could probably negotiate better pricing or 09:24 24 other advantages, additional discounts, product 09:24 25 delivery, and maybe be the first ones to</p>	<p style="text-align: center;">20</p> <p>09:25 1 Q. Did -- did MARTA view the other 09:25 2 buying groups as MARTA's competitors? 09:26 3 MR. DEW: Objection to form. 09:26 4 THE WITNESS: In some ways, yes. 09:26 5 If another buying group came in and 09:26 6 convinced one of our members to leave and 09:26 7 join them, that cut back on some of our 09:26 8 purchasing power and our influence in the 09:26 9 market that dealer was at. 09:26 10 So -- and the same thing happened 09:26 11 the other way. I'm sure that when we took 09:26 12 one of their members, they were less than 09:26 13 thrilled. 09:26 14 BY MR. LAU: 09:26 15 Q. Other than the AVB what were the 09:26 16 other buying groups that MARTA saw out there 09:26 17 that MARTA kept an eye on in terms of, you 09:26 18 know, a concern that maybe MARTA -- that 09:26 19 another buying group might take a member away 09:26 20 from MARTA? 09:26 21 MR. DEW: Objection to form. 09:26 22 THE WITNESS: NATM was not prone to 09:26 23 add new members. They consisted primarily 09:26 24 of very large dealers and were somewhat 09:26 25 paranoid about sharing their very good</p>
<p style="text-align: center;">19</p> <p>09:24 1 introduce new product. And on top of that, you 09:24 2 could simplify some of the marketing efforts, 09:24 3 competitive shopping, best practices. 09:24 4 So this is what most buying groups 09:24 5 try to do. There aren't many who actually are 09:24 6 involved these days in buying. 09:24 7 Q. During the time period that you 09:24 8 were employed by MARTA, who did MARTA view as 09:24 9 its competitors? 09:24 10 MR. DEW: Objection to form. 09:24 11 THE WITNESS: And now I go? 09:24 12 BY MR. LAU: 09:24 13 Q. Yes. 09:25 14 A. The dealers' view was that the main 09:25 15 competitors were companies like Best Buy or at 09:25 16 the time Circuit City, Lowe's, Home Depot, for 09:25 17 some product categories Walmart, the large 09:25 18 national accounts who operated primarily by 09:25 19 offering better pricing. 09:25 20 There was also a sentiment among 09:25 21 some that the other groups were competitors in 09:25 22 that it was a routine practice for one group to 09:25 23 try to -- anyway for most groups, it was a 09:25 24 routine practice to try to get dealers from one 09:25 25 group to leave that group and do on their own.</p>	<p style="text-align: center;">21</p> <p>09:27 1 programs with the smaller entities. So 09:27 2 for the most part NATM was kind of a fixed 09:27 3 membership. But Nationwide was very 09:27 4 active in recruiting members to come in, 09:27 5 and they were probably the most 09:27 6 successful. 09:27 7 During the period that I was at 09:27 8 MARTA, we had a net loss of dealers of I 09:27 9 would say around 20. I think there were 09:27 10 about a hundred and twenty when I started. 09:27 11 And there were about a hundred when I 09:27 12 left. So I think almost all of those 09:27 13 ended up going to Nationwide. 09:27 14 There was a group called Mega Group 09:27 15 which had many more members, but they were 09:27 16 very small. I think they may have claimed 09:27 17 to have 800 members. But their total 09:27 18 volume was such that the average size 09:27 19 member in Mega Group was tiny. And their 09:28 20 programs were not particularly good. 09:28 21 AVB had I think they claimed 2,500 09:28 22 members or maybe 2,000. So in terms of 09:28 23 total number of dealers, almost all of the 09:28 24 groups except for NATM were much bigger, a 09:28 25 lot more people; but our advantage was</p>

<p style="text-align: center;">22</p> <p>09:28 1 that we had sizeable dealers. So we 09:28 2 weren't negotiating for a good price on 12 09:28 3 pieces. We would negotiating for a good 09:28 4 price a full truckload.</p> <p>09:28 5 BY MR. LAU:</p> <p>09:28 6 Q. Did MARTA ever take steps to gather 09:28 7 information about these other buying groups?</p> <p>09:28 8 MR. DEW: Objection to form.</p> <p>09:28 9 THE WITNESS: What do you mean?</p> <p>09:28 10 BY MR. LAU:</p> <p>09:28 11 Q. In terms of trying to identify the 09:28 12 membership of these other buying groups, the 09:28 13 revenue of these other buying groups.</p> <p>09:29 14 A. As far as membership, yes. I was 09:29 15 always curious to know who was in the other 09:29 16 group because I would If I would -- were to try 09:29 17 to bring them to my group, I wanted to know who 09:29 18 they were with. I also wanted to know what 09:29 19 they were paying. It wasn't easy to find out. 09:29 20 And vice versa.</p> <p>09:29 21 When Nationwide was led by a 09:29 22 gentleman named Lee Gutman and he brought a new 09:29 23 member in, the first thing he did was go out to 09:29 24 that member's offices and sit down for a couple 09:29 25 of days and gather all the data he could. What</p>	<p style="text-align: center;">24</p> <p>09:30 1 Q. So to give an example, if you would 09:31 2 be interested in finding out, for example, if 09:31 3 Nationwide was purchasing say televisions from 09:31 4 Toshiba at a certain price and certain payment 09:31 5 terms, you would be interested in finding out 09:31 6 that information?</p> <p>09:31 7 A. I'd just want to make real sure 09:31 8 that my price was at least as good or better.</p> <p>09:31 9 Q. How would you go about finding that 09:31 10 information, Mr. Mann?</p> <p>09:31 11 A. Well, if somebody joined the group, 09:31 12 this is not highly confidential; so we could 09:31 13 sit down and talk, and I could find out -- 09:31 14 generally, they're not going to join the group 09:31 15 if they're going to pay more.</p> <p>09:31 16 So I would share information in the 09:31 17 parcellation process. Sometimes it just fell 09:31 18 into our lap. Invoices tend to be very thin 09:31 19 paper and big stacks, and we would sometimes 09:31 20 get invoices from companies like Toshiba that 09:32 21 didn't want us.</p> <p>09:32 22 Q. Any other means of obtaining this 09:32 23 information?</p> <p>09:32 24 A. No. Dealers -- dealers sometimes 09:32 25 would find out from their local guy what deal</p>
<p style="text-align: center;">23</p> <p>09:29 1 are you paying for this? What are you paying 09:29 2 for that? What's your program? What's your 09:29 3 volume rebate level. That kind of information 09:29 4 is valuable if you negotiate.</p> <p>09:29 5 You go to a vendor, we know that 09:29 6 they're prone to give larger rebate for a 09:30 7 smaller volume level. It gives us negotiating 09:30 8 stands.</p> <p>09:30 9 The information about who's in the 09:30 10 group is pretty easy to get. The information 09:30 11 about what they're paying is much more 09:30 12 difficult.</p> <p>09:30 13 Q. When you say "what they're paying," 09:30 14 what do you refer to? What does that mean?</p> <p>09:30 15 A. Well, the -- there isn't uniform 09:30 16 pricing from any company. Price it's a 09:30 17 function of what the invoice level is and what 09:30 18 the chain of discounts are.</p> <p>09:30 19 So if I could find out that 09:30 20 somebody was getting a 3-percent cash discount 09:30 21 for paying in 20 days instead of a 2-percent 09:30 22 cash discount for paying in 45, we could pay in 09:30 23 20 days; and that's an extra point. So that 09:30 24 kind of information was of value if I could get 09:30 25 it.</p>	<p style="text-align: center;">25</p> <p>09:32 1 was going on. Pricing isn't uniform, and it's 09:32 2 also not -- well, we may have an 18-cubic foot 09:32 3 refrigerator that we owned at \$280; and other 09:32 4 people were paying 290. But they may have had 09:32 5 a different model that they were paying 270 09:32 6 for, but we had more features. So there's a 09:32 7 lot of judgment. And part and parcel of that 09:32 8 is what the distribution plan is.</p> <p>09:32 9 A lot of the people that we were 09:32 10 close to, the vendors that we were close to 09:32 11 gave us favorable distribution. We had models 09:32 12 that were not in competitors' stores. We had 09:33 13 better featured models, which gave us a chance 09:33 14 to sell better mix.</p> <p>09:33 15 Q. So you found out what other buying 09:33 16 groups were paying from new members. Sometimes 09:33 17 information just fell in your lap because of 09:33 18 invoices you would just receive?</p> <p>09:33 19 A. Some of it was common sense. For 09:33 20 example, it's pretty well known what certain 09:33 21 organizations work at. Warehouse club, they 09:33 22 make ten points. They won't make 15. They're 09:33 23 a warehouse club. That's how they got to where 09:33 24 they're at, and that's what they do.</p> <p>09:33 25 And there are a few manufacturers</p>

<p style="text-align: center;">26</p> <p>09:33 1 disciplined enough to channel price and say, 09:33 2 well, we sell this at a thousand dollars retail 09:33 3 and dealers want to make 30 points; so we're 09:33 4 going to charge them 700 bucks. Oh, let's sell 09:33 5 Costco. Okay. Well, let's sell them at \$900 09:34 6 because that way they'll sell it also at a 09:34 7 thousand; and we'll have an orderly market. It 09:34 8 was much more likely if you could get a big 09:34 9 order from Costco, you'd sell them at the same 09:34 10 price. You know, maybe you wouldn't give them 09:34 11 the same discount.</p> <p>09:34 12 But if I suddenly found a product 09:34 13 that we were selling for a thousand dollars and 09:34 14 the warehouse club was selling it at \$800, I 09:34 15 was real sure that they were paying \$720 for 09:34 16 it.</p> <p>09:34 17 Q. Did you ever meet with your 09:34 18 counterparts at these other buying groups, such 09:34 19 as NATM, Nationwide, and AVB?</p> <p>09:34 20 A. Yes, frequently.</p> <p>09:34 21 Q. And why would you meet with your 09:34 22 counterparts?</p> <p>09:34 23 A. Because I was an odd duck, and so 09:34 24 were they. We weren't real retailers. We just 09:34 25 kind of played at it. We didn't have any</p>	<p>09:35 1 A. It was a social event. We didn't 09:35 2 sit down to talk about -- in most cases. We 09:35 3 rarely sat down to talk about how we could go 09:36 4 out and work jointly to get some advantage. 09:36 5 That did happen on occasion.</p> <p>09:36 6 Q. So not a -- not a formal meeting, 09:36 7 but you would be at a social event of some 09:36 8 sort, and you would just happen to bump into 09:36 9 your counterparts?</p> <p>09:36 10 A. A trade --</p> <p>09:36 11 MR. DEW: Objection. Misstates the 09:36 12 prior testimony.</p> <p>09:36 13 THE WITNESS: I would be at a trade 09:36 14 show sponsored by some manufacturer, and I 09:36 15 would often be seated with the other 09:36 16 buying group people. That was the most 09:36 17 common time that I would get together with 09:36 18 people.</p> <p>09:36 19 There were rare occasions when we 09:36 20 would have other types of meetings.</p> <p>09:36 21 BY MR. LAU:</p> <p>09:36 22 Q. Can you describe these other types 09:36 23 of meetings for me, please?</p> <p>09:36 24 A. Yes. The only one that I can think 09:36 25 of -- this is how rare it was -- one time Bob</p>
<p style="text-align: center;">27</p> <p>09:34 1 inventory. We didn't have any numbers to beat. 09:34 2 So when a company, say, like, 09:34 3 Hitachi had a sales meeting and we're all going 09:35 4 to a restaurant in a bus, invariably, I end up 09:35 5 sitting with a group guy. Lee Gutman and I 09:35 6 were always on the bus together because we 09:35 7 didn't really fit in the scheme of things. 09:35 8 If Panasonic had some event and 09:35 9 they set up dinner tables, and my dinner table 09:35 10 was like the kids table. I'm sitting there 09:35 11 with the group guys. 09:35 12 Q. You mentioned Lee Gutman. Who is 09:35 13 he? 09:35 14 A. Lee Gutman was the executive 09:35 15 director of Nationwide at one time. 09:35 16 Q. So you would frequently meet with 09:35 17 your counterparts at other buying groups and -- 09:35 18 MR. DEW: Objection. Misstates the 09:35 19 prior testimony. 09:35 20 BY MR. LAU: 09:35 21 Q. Is that a fair characterization of 09:35 22 your testimony, Mr. Mann? 09:35 23 A. I didn't meet with them. I was 09:35 24 with them. 09:35 25 Q. You were with them.</p>	<p>09:36 1 Lawrence, who was the head of AVB, and I both 09:36 2 met in Chicago with Whirlpool, trying to 09:37 3 convince them to give independent leaders 09:37 4 better sheltered models. 09:37 5 Q. Can you think of any other examples 09:37 6 of actual planned meetings with your 09:37 7 counterparts at these other buying groups? 09:37 8 MR. DEW: Objection to form. 09:37 9 THE WITNESS: Not in a business 09:37 10 setting. 09:37 11 BY MR. LAU: 09:37 12 Q. Okay. Let's go back to that first 09:37 13 kind of setting where you're at a trade show 09:37 14 and you see your counterparts. What would you 09:37 15 and your counterparts, these other buying 09:37 16 groups, discuss? 09:37 17 MR. DEW: Objection to form. 09:37 18 THE WITNESS: Well, important 09:37 19 things like, we haven't used one of my 09:37 20 drives yet today; and we're supposed to 09:37 21 use at least one from everybody. So 09:37 22 here's a Par 3. Hope -- I hope I can get 09:37 23 it on the green. 09:37 24 BY MR. LAU: 09:38 25 Q. Anything else -- anything having to</p>

<p style="text-align: right;">30</p> <p>09:38 1 do with your respective businesses?</p> <p>09:38 2 MR. DEW: Objection to form.</p> <p>09:38 3 THE WITNESS: I'm sure. I mean,</p> <p>09:38 4 you know, we, gossip of sorts and talking</p> <p>09:38 5 about how Sears is tanking or how Lowe's</p> <p>09:38 6 is screwing up the major appliance</p> <p>09:38 7 business or do you think Samsung will ever</p> <p>09:38 8 get there act together, generic</p> <p>09:38 9 conversation about the industry.</p> <p>09:38 10 BY MR. LAU:</p> <p>09:38 11 Q. Would having these discussions with</p> <p>09:38 12 your counterparts about the industry give you a</p> <p>09:38 13 better sense as to what is going on in the</p> <p>09:38 14 industry?</p> <p>09:38 15 MR. DEW: Objection to form.</p> <p>09:38 16 THE WITNESS: I think so.</p> <p>09:38 17 BY MR. LAU:</p> <p>09:38 18 Q. Okay.</p> <p>09:38 19 A. At least I would know sometimes</p> <p>09:38 20 that we weren't the only people suffering from</p> <p>09:38 21 the devastation that somebody like Best Buy</p> <p>09:38 22 could cause.</p> <p>09:38 23 Q. Would you sometimes find out that a</p> <p>09:38 24 vendor was telling you one thing and a vendor</p> <p>09:39 25 another story?</p>	<p>09:40 1 BY MR. LAU:</p> <p>09:40 2 Q. The fact that you were meeting with</p> <p>09:40 3 a counterpart from Nationwide or NATM or AVB?</p> <p>09:40 4 MR. DEW: Objection to form.</p> <p>09:40 5 THE WITNESS: No. I think it would</p> <p>09:40 6 be much more odd for me to say, I refuse</p> <p>09:40 7 to have dinner with you tonight because</p> <p>09:40 8 I'm not going to sit at the table with</p> <p>09:40 9 that son of a gun.</p> <p>09:40 10 BY MR. LAU:</p> <p>09:40 11 Q. Do you -- you viewed that as</p> <p>09:40 12 accepted industry practice?</p> <p>09:40 13 MR. DEW: Objection to form.</p> <p>09:40 14 Q. Is that fair?</p> <p>09:40 15 MR. DEW: Objection to form.</p> <p>09:40 16 THE WITNESS: Well, these were</p> <p>09:40 17 primarily were settings like Olympics or</p> <p>09:40 18 the US Open or some sort of dinner in</p> <p>09:40 19 Arizona or Albuquerque where they're</p> <p>09:40 20 introducing a new product and they bring</p> <p>09:40 21 in dealers from around the country. And I</p> <p>09:40 22 considered whatever discussions we had to</p> <p>09:41 23 be no different than the discussion</p> <p>09:41 24 between dealers who were also there.</p> <p>09:41 25 Oftentimes, guys who compete with each</p>
<p style="text-align: right;">31</p> <p>09:39 1 MR. DEW: Objection to form.</p> <p>09:39 2 THE WITNESS: I guess so. I mean,</p> <p>09:39 3 on occasion there were inconsistencies.</p> <p>09:39 4 But when you say would I find that out,</p> <p>09:39 5 would I find that out by talking with</p> <p>09:39 6 other group people?</p> <p>09:39 7 BY MR. LAU:</p> <p>09:39 8 Q. Correct.</p> <p>09:39 9 A. No. I would more likely to find</p> <p>09:39 10 that out because of the way events unfolded.</p> <p>09:39 11 We were told by LG when they launched their</p> <p>09:39 12 fancy new major appliance line in 2003 that</p> <p>09:39 13 they were going to sell Independence. Before</p> <p>09:39 14 they shipped the first product, they now said</p> <p>09:39 15 they were going to sell Best Buy. Kind of a</p> <p>09:39 16 shame. I didn't need to find that out from</p> <p>09:39 17 another group. I found that out through the</p> <p>09:39 18 trade press.</p> <p>09:39 19 Q. When you met with your counterparts</p> <p>09:39 20 at these other buying groups, did you feel it</p> <p>09:40 21 was improper at all?</p> <p>09:40 22 MR. DEW: Objection to form.</p> <p>09:40 23 THE WITNESS: Did I feel what was</p> <p>09:40 24 improper?</p> <p>25</p>	<p>09:41 1 other both at the same meeting. It's kind</p> <p>09:41 2 of hard to hold a meeting and bring in all</p> <p>09:41 3 of your sales retailer and figure out a</p> <p>09:41 4 way to separate one from the another. It</p> <p>09:41 5 would take you weeks to hold a meeting if</p> <p>09:41 6 you did it that way.</p> <p>09:41 7 Whatever they wished to share with</p> <p>09:41 8 me, I was happy to gather the information.</p> <p>09:41 9 I can't remember anything that was</p> <p>09:41 10 particularly valuable. And I know that</p> <p>09:41 11 when I spoke with them, the last thing</p> <p>09:41 12 that I needed to do was disclose</p> <p>09:41 13 confidential information which had to do</p> <p>09:41 14 with maybe some advantage we had, whether</p> <p>09:41 15 we really had it or not.</p> <p>09:41 16 BY MR. LAU:</p> <p>09:41 17 Q. You mentioned that at these trade</p> <p>09:41 18 shows, the dealers would meet among themselves;</p> <p>09:41 19 is that correct?</p> <p>09:41 20 MR. DEW: Objection. Misstates</p> <p>09:41 21 prior testimony.</p> <p>09:41 22 THE WITNESS: It depends. When you</p> <p>09:42 23 say meet, if they're in a golf foursome or</p> <p>09:42 24 they're at a meal or it's the super bowl</p> <p>09:42 25 and they have a cocktail party the night</p>

<p style="text-align: center;">34</p> <p>09:42 1 before, they would meet; but that wasn't a 09:42 2 business meeting. That was primarily 09:42 3 being part of whatever the event that was 09:42 4 taking place.</p> <p>09:42 5 BY MR. LAU:</p> <p>09:42 6 Q. Okay. And I understand the 09:42 7 distinction you're drawing between a planned 09:42 8 business meeting on the one hand versus two 09:42 9 dealers happen to be at a trade show and they 09:42 10 encounter each other. Is that the distinction 09:42 11 you're trying to draw?</p> <p>09:42 12 MR. DEW: Objection. Misstates 09:42 13 prior testimony.</p> <p>09:42 14 THE WITNESS: It is.</p> <p>09:42 15 BY MR. LAU:</p> <p>09:42 16 Q. Okay. And so at the EPI trade 09:42 17 shows when the dealers would, you know, bump 09:42 18 into each other either at dinner or on the golf 09:42 19 course, what's your understanding as to what 09:43 20 they would discuss?</p> <p>09:43 21 MR. DEW: Objection. Lack of 09:43 22 foundation.</p> <p>09:43 23 THE WITNESS: I don't know. I know 09:43 24 what I discussed.</p> <p>25</p>	<p>09:44 1 need for the witness to speculate.</p> <p>09:44 2 BY MR. LAU:</p> <p>09:44 3 Q. Only answer if you know.</p> <p>09:44 4 A. North American Retail Dealers 09:44 5 Association.</p> <p>09:44 6 Q. Do you have any understanding as to 09:44 7 the purpose of that trade association?</p> <p>09:44 8 A. It was an education group 09:44 9 primarily. What I did was, we had most of the 09:44 10 members paying dues to belong to that group; 09:44 11 and I negotiated with their director, a woman 09:44 12 named Elly Valas, to have all MARTA members be 09:44 13 part of NARDA and have access to their trading 09:45 14 materials and educational videos.</p> <p>09:45 15 And by paying for all the members 09:45 16 even though maybe 20, 30 percent hadn't 09:45 17 belonged previously, we paid less money than 09:45 18 the individual members who did belong pay on 09:45 19 their own.</p> <p>09:45 20 Q. Okay. And so was it -- was MARTA a 09:45 21 member or just the members of MARTA were 09:45 22 members or both?</p> <p>09:45 23 A. It didn't come up like that. I 09:45 24 don't recall that I ever attended anything. 09:45 25 MARTA wasn't huge. We had maybe 17 employees.</p>
<p style="text-align: center;">35</p> <p>09:43 1 BY MR. LAU:</p> <p>09:43 2 Q. Okay. And you don't view it -- you 09:43 3 didn't view your interactions with your 09:43 4 counterparts at other buying groups as 09:43 5 improper, correct?</p> <p>09:43 6 MR. DEW: Objection to form.</p> <p>09:43 7 THE WITNESS: I didn't. And I 09:43 8 think it would take a very humble person 09:43 9 to say yes, what I was doing was 09:43 10 absolutely wrong.</p> <p>09:43 11 BY MR. LAU:</p> <p>09:43 12 Q. And similarly, the fact that 09:43 13 dealers would encounter each other at these 09:43 14 trade shows and interact with each other and 09:43 15 talk with each other, you don't view that as 09:43 16 improper either, correct?</p> <p>09:43 17 A. I don't.</p> <p>09:43 18 Q. Okay. Was MARTA a member of any 09:44 19 trade association?</p> <p>09:44 20 A. Yes. We belonged to NARDA, 09:44 21 N-A-R-D-A.</p> <p>09:44 22 Q. Do you know what that stands for, 09:44 23 NARDA?</p> <p>09:44 24 A. I can --</p> <p>09:44 25 MR. DEW: Objection. There's no</p>	<p>09:45 1 The vast majority were involved in the billing 09:45 2 process, so I may have had my assistant go to a 09:45 3 NARDA meeting. I can't recall, but we were 09:45 4 welcome just what they did wasn't so applicable 09:46 5 for us.</p> <p>09:46 6 Q. Any other trade associations that 09:46 7 MARTA's members belonged to that you recall?</p> <p>09:46 8 MR. DEW: Objection to form.</p> <p>09:46 9 THE WITNESS: I worked with 09:46 10 Consumer Electronics Association and 09:46 11 attended some meetings. I don't remember 09:46 12 if we were considered a member or not. We 09:46 13 didn't pay anything, but they were 09:46 14 thrilled to have dealers come to CES.</p> <p>09:46 15 BY MR. LAU:</p> <p>09:46 16 Q. Why were they -- why were they 09:46 17 thrilled, do you think?</p> <p>09:46 18 MR. DEW: Objection to form.</p> <p>09:46 19 THE WITNESS: Well, they have one 09:46 20 of the largest trade shows in the country 09:46 21 in January in Las Vegas; and they have 09:46 22 most of the electronics, computer 09:46 23 manufacturers, companies from Samsung to 09:47 24 Microsoft and all points in between 09:47 25 displaying product there. And that show</p>

<p style="text-align: center;">38</p> <p>09:47 1 would not be successful if there weren't a 09:47 2 bunch of people going who actually bought 09:47 3 the stuff.</p> <p>09:47 4 BY MR. LAU:</p> <p>09:47 5 Q. Was CES one of the trade shows 09:47 6 where you might bump into one of your 09:47 7 counterparts at another buying group or your 09:47 8 members might bump into other dealers?</p> <p>09:47 9 A. Yes.</p> <p>09:47 10 MR. DEW: Objection. Misstates 09:47 11 prior testimony.</p> <p>09:47 12 BY MR. LAU:</p> <p>09:47 13 Q. What -- other than CES, what other 09:47 14 trade shows did either MARTA and you attend or 09:47 15 your members attend?</p> <p>09:47 16 A. There was a builders show, which 09:47 17 was primarily -- our interest was in major 09:47 18 appliances. There was a show called the 09:47 19 Kitchen and Bath Show, which was held at 09:47 20 various spots, Orlando, Chicago, I think 09:48 21 Dallas. There may have been some other ones. 09:48 22 Any show where companies like 09:48 23 Whirlpool, GE, and Frigidaire, LG, Samsung 09:48 24 would go where they would display their 09:48 25 product, I would encourage the members to go</p>	<p>09:49 1 Q. Was it a discernable program? 09:49 2 MR. DEW: Objection to form. 09:49 3 THE WITNESS: When you say 09:50 4 "program," what do you mean by that? 09:50 5 There wasn't a fee. There wasn't a 09:50 6 discount.</p> <p>09:50 7 BY MR. LAU:</p> <p>09:50 8 Q. Let me take a step back. Actually, 09:50 9 let me show you a document; and maybe this will 09:50 10 help out.</p> <p>09:50 11 I would like to show a document to 09:50 12 the witness that's already been marked as -- 09:50 13 it's been marked in a previous deposition as 09:50 14 Exhibit 3244. Why don't you take a look at 09:51 15 this document; and in particular for the 09:51 16 purpose of our discussion now, focus on page 09:51 17 15. This is the paragraph, the section that 09:51 18 reads competitive analysis program?</p> <p>09:51 19 MR. DEW: Just for the record, the 09:51 20 witness should take a look at the 09:51 21 whole document to be aware of the whole 09:51 22 document.</p> <p>09:51 23 MR. LAU: That's fine.</p> <p>09:51 24 THE WITNESS: It's a very big 09:51 25 document.</p>
<p style="text-align: center;">39</p> <p>09:48 1 because you got a chance to talk to a lot of 09:48 2 manufacturers for the price of one airfare. 09:48 3 We went to Comdex for a while, 09:48 4 which was a big computer show. That died, but 09:48 5 at one time I think it was the largest trade 09:48 6 show in the country, miserable show. 09:48 7 Retail vision was another show. 09:48 8 That was a good show. 09:49 9 Q. And have you ever heard of the 09:49 10 phrase competitive analysis program used at 09:49 11 MARTA? 09:49 12 MR. DEW: Objection to form. 09:49 13 THE WITNESS: I don't think so. 09:49 14 BY MR. LAU: 09:49 15 Q. Did MARTA ever have a program 09:49 16 designed to collect information about the Best 09:49 17 Buys and Circuit Cities and Home Depots of the 09:49 18 world? 09:49 19 MR. DEW: Objection to form. 09:49 20 THE WITNESS: Yes. 09:49 21 BY MR. LAU: 09:49 22 Q. Did that program have any sort of, 09:49 23 like, specific name associated with it? 09:49 24 A. I don't remember that it had a 09:49 25 name.</p>	<p>09:51 1 MR. DEW: It is. 09:51 2 THE WITNESS: When you say I should 09:51 3 take a look at the whole document, you 09:51 4 want me to scrutinize this entire 09:51 5 document? 09:51 6 MR. DEW: If that's what you feel 09:51 7 you need to do in order to testify better, 09:51 8 absolutely. 09:51 9 THE WITNESS: Let me focus on the 09:51 10 competitive analysis program. Okay. I'm 09:52 11 familiar with this concept. 09:52 12 BY MR. LAU: 09:52 13 Q. Okay. Mr. Mann, does that refresh 09:52 14 your recollection about some sort of 09:52 15 competitive analysis program at MARTA? 09:52 16 A. No. This came after I was gone 09:52 17 but -- so if you're asking me about this 09:53 18 particular program, I really know nothing about 09:53 19 this particular program; but I know a lot about 09:53 20 the concept. 09:53 21 Q. All right. Tell me about the 09:53 22 concept. What do you recall about the concept 09:53 23 during your time period as executive director? 09:53 24 A. Every dealer is well served to have 09:53 25 a good idea of what's taking place in this</p>

<p style="text-align: center;">42</p> <p>09:53 1 market. To that end, almost all do competitive 09:53 2 shopping. They'll go in and they'll check and 09:53 3 see what the other guy's doing.</p> <p>09:53 4 It's not a good idea to have the 09:53 5 same product on the floor as your competitor 09:53 6 across the street and have it priced a hundred 09:53 7 dollars higher because if you don't know that 09:53 8 you're a hundred dollars higher, your customers 09:53 9 will know; and you'll be the expensive guy, and 09:53 10 the guy across the street will be the guy I buy 09:53 11 from.</p> <p>09:53 12 So since everyone was doing it, 09:53 13 there were times when we would operate to 09:54 14 provide this kind of information to all of the 09:54 15 memberships on a relatively cheap basis.</p> <p>09:54 16 I had a guy in Texas who had hired 09:54 17 a woman who was a shopper, and she would do -- 09:54 18 among others, she would do Sears, which was a 09:54 19 strong competitor for appliances and Best Buy 09:54 20 who sold both appliances and electronics and 09:54 21 Circuit City, I think. I don't know. There 09:54 22 were two or three retailers. And she would 09:54 23 draw up a floor plan.</p> <p>09:54 24 So when I saw that, I offered to 09:54 25 pay -- I think we paid her \$50 a week and,</p>	<p style="text-align: center;">44</p> <p>09:56 1 Q. In your first example when you 09:56 2 referenced, I think you used the phrase "guy in 09:56 3 Texas," was that a reference to a MARTA member 09:56 4 who happened to be located in Texas?</p> <p>09:56 5 A. Yes.</p> <p>09:56 6 Q. Do you remember the name of that 09:56 7 dealer?</p> <p>09:56 8 A. Oh, this is terrible. This is the 09:56 9 function of to many years have gone by. He was 09:56 10 in El Paso. He had two stores. He was on the 09:56 11 board at different times, he and his wife. I 09:56 12 can't remember his name.</p> <p>09:56 13 Q. That's fine. That's fine. Other 09:56 14 than -- during what time period was the guy in 09:56 15 Texas providing MARTA with this information?</p> <p>09:56 16 A. Approximately 2004.</p> <p>09:56 17 Q. Would other MARTA members provide 09:56 18 similar information to MARTA?</p> <p>09:57 19 MR. DEW: Objection to form.</p> <p>09:57 20 THE WITNESS: I would get feedback. 09:57 21 People would say, well, I wish I was in El 09:57 22 Paso because they're selling it for a lot 09:57 23 less here.</p> <p>09:57 24 BY MR. LAU:</p> <p>09:57 25 Q. Maybe you misunderstood my</p>
<p style="text-align: center;">43</p> <p>09:54 1 which is what he was paying her to do this. A 09:54 2 soccer mom who would do it in the afternoon. 09:54 3 Then I would take these reports, and I would 09:54 4 e-mail them out to all of the members so they 09:54 5 would know what was going on.</p> <p>09:55 6 It isn't perfect because even 09:55 7 national retailers change market by market. 09:55 8 But it would give a good idea especially of 09:55 9 trends. So if the Philips product for three 09:55 10 weeks in a row had the same product at the same 09:55 11 price; and all of a sudden the next report 09:55 12 shows that something has dropped to 20 percent 09:55 13 cost, something took place. They cut the 09:55 14 price. They had a special program. Something 09:55 15 was going on.</p> <p>09:55 16 There were occasional times when I 09:55 17 would just send out information if I learned of 09:55 18 something that was going on, like, be careful 09:55 19 if you ordered this because they're not 09:55 20 shipping it to anybody. So if you've got an ad 09:55 21 breaking in three weeks and on the front cover 09:55 22 is a gorgeous picture of this product, you're 09:56 23 not going to have any of it. And that kind of 09:56 24 information I would share with all of the 09:56 25 members.</p>	<p style="text-align: center;">45</p> <p>09:57 1 question. Were there other MARTA members who 09:57 2 would do competitive shopping and then share 09:57 3 that information with MARTA?</p> <p>09:57 4 MR. DEW: Objection to form.</p> <p>09:57 5 THE WITNESS: Yes. Nothing quite 09:57 6 as formalized as the reports that we were 09:57 7 getting from the guy in El Paso, but I got 09:57 8 information all the time.</p> <p>09:57 9 BY MR. LAU:</p> <p>09:57 10 Q. Okay. If you could put a number on 09:57 11 the number of MARTA members who would do 09:57 12 competitive shopping and share that information 09:57 13 with MARTA, what would be a fair estimate of 09:57 14 that number?</p> <p>09:57 15 MR. DEW: Objection to form.</p> <p>09:57 16 THE WITNESS: 75 percent.</p> <p>09:58 17 BY MR. LAU:</p> <p>09:58 18 Q. Okay. And let's talk about --</p> <p>09:58 19 A. Well, you know, I should explain 09:58 20 that. When I say 75 percent, I mean three out 09:58 21 of four. It may be more than that, but at one 09:58 22 time or another would have called me to say, 09:58 23 you made that a core model. That was really 09:58 24 stupid because it's getting hammered. That's 09:58 25 competitive information. It's based on what</p>

<p style="text-align: center;">46</p> <p>09:58 1 was taking place in their market.</p> <p>09:58 2 I may have heard from somebody just</p> <p>09:58 3 once in four or five years. But over the</p> <p>09:58 4 course of my tenure with MARTA, most of the</p> <p>09:58 5 dealers at one time or another would call up</p> <p>09:58 6 either to praise something that we did or to</p> <p>09:58 7 bitterly complain about how foolish we were to</p> <p>09:58 8 do it. Because we had a lot to do with</p> <p>09:58 9 merchandising the products that we bought and</p> <p>09:58 10 selecting which models would be the go-to</p> <p>09:59 11 models, the profit models, the featured models.</p> <p>09:59 12 And invariably as much as we tried</p> <p>09:59 13 to be pristine in that effort, we would make</p> <p>09:59 14 mistakes; and there wasn't anybody so shy as to</p> <p>09:59 15 not tell me when we made a mistake.</p> <p>09:59 16 Q. Do you have any understanding as to</p> <p>09:59 17 where MARTA -- MARTA's members would obtain</p> <p>09:59 18 information about the market? Where would they</p> <p>09:59 19 get that information from?</p> <p>20 MS. KERN: Objection. Speculation.</p> <p>21 This is Sylvie Kern.</p> <p>22 COURT REPORTER: I'm sorry, but I</p> <p>23 couldn't even hear. Who was speaking?</p> <p>24 MS. KERN: This is Sylvie Kern.</p> <p>25 COURT REPORTER: And you made an</p>	<p>10:00 1 the prices are. Some are very sophisticated,</p> <p>10:00 2 using video pens and recording devices. Others</p> <p>10:00 3 just kind of remember what they can remember</p> <p>10:00 4 and run outside and write it down.</p> <p>10:00 5 Q. Do you think these shopping reports</p> <p>10:00 6 were an accepted business custom?</p> <p>10:01 7 MR. DEW: Objection. Vague. Calls</p> <p>for speculation.</p> <p>10:01 8 THE WITNESS: I don't know of any</p> <p>10:01 9 retailer that hasn't at one time or</p> <p>10:01 10 another checked out what the competition's</p> <p>10:01 11 doing, and some are very formal.</p> <p>10:01 12 National accounts have people who</p> <p>10:01 13 do with this full-time. Some hire</p> <p>10:01 14 organizations to do this.</p> <p>10:01 15 BY MR. LAU:</p> <p>10:01 16 Q. Why do you think it was important</p> <p>to gather this type of information?</p> <p>10:01 17 MR. DEW: Objection to form.</p> <p>10:01 18 THE WITNESS: Most of the time it</p> <p>is important because of pricing. You</p> <p>10:01 19 can't run an ad and be successful that</p> <p>10:01 20 says come shop at my store; we have almost</p> <p>10:01 21 the best price in town.</p> <p>10:01 22 If you spend the money to promote</p>
<p style="text-align: center;">47</p> <p>09:59 1 objection?</p> <p>09:59 2 MS. KERN: Yes, I did. Objection.</p> <p>09:59 3 It calls for speculation.</p> <p>09:59 4 COURT REPORTER: Thank you.</p> <p>09:59 5 BY MR. LAU:</p> <p>09:59 6 Q. Mr. Mann, I don't want you to</p> <p>09:59 7 speculate.</p> <p>09:59 8 Just based on your recollection</p> <p>09:59 9 today, when -- when members would provide you</p> <p>09:59 10 with information about what's happening in the</p> <p>09:59 11 market, do you have any understanding as to</p> <p>09:59 12 where the members were getting that</p> <p>10:00 13 information?</p> <p>10:00 14 MR. DEW: Objection. Vague.</p> <p>10:00 15 THE WITNESS: I would say the</p> <p>10:00 16 primary source was competitive advertising</p> <p>10:00 17 because that is something they could see.</p> <p>10:00 18 But sometimes they picked up information</p> <p>10:00 19 from shopping reports.</p> <p>10:00 20 BY MR. LAU:</p> <p>10:00 21 Q. When you say "shopping reports,"</p> <p>10:00 22 what do you mean?</p> <p>10:00 23 A. Where they have some employee go</p> <p>10:00 24 into a competitor store. They'll go into a</p> <p>10:00 25 Best Buy store and walk the floor and see what</p>	<p>10:01 1 store traffic by advertising your product</p> <p>10:02 2 and you advertise it in your flier and</p> <p>10:02 3 then they pick up the one from some other</p> <p>10:02 4 competitor and there's the same product</p> <p>10:02 5 and it's \$50 less, you wasted a lot of</p> <p>10:02 6 money.</p> <p>10:02 7 So mostly they just want to make</p> <p>10:02 8 sure that they don't get embarrassed in</p> <p>10:02 9 the paper. They're advertising --</p> <p>10:02 10 invariably it's to drive people into the</p> <p>10:02 11 store, and you don't do that if you</p> <p>10:02 12 convince the people that they're paying</p> <p>10:02 13 too much.</p> <p>10:02 14 MR. DEW: All, we've been going for</p> <p>10:02 15 a little bit. Would this be a fair time</p> <p>for a break?</p> <p>10:02 16 MR. LAU: Sure.</p> <p>10:02 17 MR. DEW: If that's okay.</p> <p>10:02 18 MR. LAU: Sure. Let's go take a</p> <p>10:02 19 break.</p> <p>10:02 20 THE VIDEOGRAPHER: Thank you. The</p> <p>10:02 21 time now is approximately 10:03 a.m.</p> <p>10:02 22 We're going off the record. This is the</p> <p>10:02 23 end of Disc No. 1.</p> <p>25</p>

<p style="text-align: center;">50</p> <p>10:02 1 (Whereupon, a short break was 10:10 2 taken.)</p> <p>10:10 3 THE VIDEOGRAPHER: The time now is 10:10 4 approximately 10:11 a.m. We're back on 10:10 5 the record. This is the beginning of Disc 10:10 6 No. 2.</p> <p>10:10 7 BY MR. LAU:</p> <p>10:10 8 Q. Mr. Mann, could you take a look at 10:10 9 Exhibit 3244, the MARTA business plan?</p> <p>10:11 10 A. Yes.</p> <p>10:11 11 Q. We had a brief discussion off the 10:11 12 record with your attorney. The date -- the 10:11 13 date of that business plan, what's the date of 10:11 14 that business plan?</p> <p>10:11 15 A. It's 1997. I thought when I first 10:11 16 looked at it, it came a couple of years after I 10:11 17 was gone. It actually was a couple of years 10:11 18 before I showed up.</p> <p>10:11 19 Q. Okay. Do you have any 10:11 20 understanding as to who drafted this document?</p> <p>10:11 21 A. Just in looking at the cover, it 10:11 22 looks like it was Jerry Dreyer.</p> <p>10:11 23 Q. Who's Jerry Dreyer?</p> <p>10:11 24 A. Jerry was the guy that was hired as 10:11 25 the executive director before me, and he was</p>	<p>10:12 1 So all of the guys in the group -- 10:12 2 almost all the guys wouldn't have done 10:12 3 their own shopping anyway, but this would 10:13 4 have given them another layer of 10:13 5 information. That's the premise that I 10:13 6 worked on when I provided whatever 10:13 7 competitive information I could get.</p> <p>10:13 8 BY MR. LAU:</p> <p>10:13 9 Q. I'm going to hand out another 10:13 10 document that's previously been entered as an 10:13 11 exhibit. This is Exhibit 2496.</p> <p>10:13 12 MS. KERN: I didn't hear that 10:13 13 exhibit number.</p> <p>10:13 14 MR. LAU: Sure. 2496.</p> <p>10:13 15 MS. KERN: Thank you.</p> <p>10:13 16 BY MR. LAU:</p> <p>10:13 17 Q. And it's an e-mail chain, and at 10:13 18 the top it's to Warren Mann from Bill Bursley 10:13 19 sent November 3, 2005.</p> <p>10:13 20 Please take a chance to review this 10:13 21 document. Let me know when you've done so. 10:13 22 apologize for the quality of the copying. This 10:14 23 is the best we have.</p> <p>10:14 24 MR. DEW: Portions of my copy are 10:14 25 very hard to read. So if you have any</p>
<p style="text-align: center;">51</p> <p>10:11 1 the first executive director after Joe Verdi, 10:11 2 who was the founder of MARTA.</p> <p>10:11 3 Q. Can we turn quickly again to page 10:11 4 15? Having looked at the three paragraphs 10:11 5 under the section entitled Competitive Analysis 10:11 6 Program and considering our discussion before 10:12 7 the break, do these three paragraphs fairly 10:12 8 reflect what MARTA was doing in terms of 10:12 9 competitive analysis?</p> <p>10:12 10 MR. DEW: I just reiterate the 10:12 11 objection that the witness hasn't had a 10:12 12 chance to look at the entire document; 10:12 13 and, therefore, is testifying to these 10:12 14 paragraphs out of context of the entire 10:12 15 document.</p> <p>10:12 16 THE WITNESS: Well, yes, it's 10:12 17 promoting the idea that this is something 10:12 18 that maybe MARTA can do on behalf of all 10:12 19 the members. And that's the basic theme 10:12 20 of any buying group.</p> <p>10:12 21 If -- if you want to set up a 10:12 22 program with Fisher and Paykel and you've 10:12 23 got 70 members that buy Fisher and Paykel, 10:12 24 you could have 70 meetings or you can have 10:12 25 one. It's more efficient to have the one.</p>	<p>10:14 1 trouble with any of the portions, please 10:14 2 tell me which ones; and we'll make sure we 10:14 3 identify those.</p> <p>10:14 4 THE WITNESS: I don't think I can 10:14 5 read this. The second page is better than 10:14 6 the first. Okay.</p> <p>10:16 7 BY MR. LAU:</p> <p>10:16 8 Q. Mr. Mann, do you recognize this 10:16 9 document?</p> <p>10:16 10 A. I don't remember it, but it's my 10:16 11 style. It's under my name. So the bottom part 10:16 12 I remember.</p> <p>10:16 13 Q. And what is this document?</p> <p>10:16 14 A. This is a bulletin that I sent out 10:16 15 regarding a shortage of plasma.</p> <p>10:16 16 Q. Okay. When you say "bulletin," 10:16 17 what do you mean by that?</p> <p>10:16 18 A. I sent out correspondence almost 10:16 19 every day regarding programs, events, pricing. 10:17 20 So this has to do with the period of time that 10:17 21 we were unable to get -- this is towards the 10:17 22 end of October 2005 -- we were unable to get 10:17 23 orders filled for Toshiba plasma sets, and we 10:17 24 had been told that there was shortage 10:17 25 nationally; and they just didn't have enough.</p>
<p style="text-align: center;">50</p> <p>10:02 1 (Whereupon, a short break was 10:10 2 taken.)</p> <p>10:10 3 THE VIDEOGRAPHER: The time now is 10:10 4 approximately 10:11 a.m. We're back on 10:10 5 the record. This is the beginning of Disc 10:10 6 No. 2.</p> <p>10:10 7 BY MR. LAU:</p> <p>10:10 8 Q. Mr. Mann, could you take a look at 10:10 9 Exhibit 3244, the MARTA business plan?</p> <p>10:11 10 A. Yes.</p> <p>10:11 11 Q. We had a brief discussion off the 10:11 12 record with your attorney. The date -- the 10:11 13 date of that business plan, what's the date of 10:11 14 that business plan?</p> <p>10:11 15 A. It's 1997. I thought when I first 10:11 16 looked at it, it came a couple of years after I 10:11 17 was gone. It actually was a couple of years 10:11 18 before I showed up.</p> <p>10:11 19 Q. Okay. Do you have any 10:11 20 understanding as to who drafted this document?</p> <p>10:11 21 A. Just in looking at the cover, it 10:11 22 looks like it was Jerry Dreyer.</p> <p>10:11 23 Q. Who's Jerry Dreyer?</p> <p>10:11 24 A. Jerry was the guy that was hired as 10:11 25 the executive director before me, and he was</p>	<p>10:12 1 So all of the guys in the group -- 10:12 2 almost all the guys wouldn't have done 10:12 3 their own shopping anyway, but this would 10:13 4 have given them another layer of 10:13 5 information. That's the premise that I 10:13 6 worked on when I provided whatever 10:13 7 competitive information I could get.</p> <p>10:13 8 BY MR. LAU:</p> <p>10:13 9 Q. I'm going to hand out another 10:13 10 document that's previously been entered as an 10:13 11 exhibit. This is Exhibit 2496.</p> <p>10:13 12 MS. KERN: I didn't hear that 10:13 13 exhibit number.</p> <p>10:13 14 MR. LAU: Sure. 2496.</p> <p>10:13 15 MS. KERN: Thank you.</p> <p>10:13 16 BY MR. LAU:</p> <p>10:13 17 Q. And it's an e-mail chain, and at 10:13 18 the top it's to Warren Mann from Bill Bursley 10:13 19 sent November 3, 2005.</p> <p>10:13 20 Please take a chance to review this 10:13 21 document. Let me know when you've done so. 10:13 22 apologize for the quality of the copying. This 10:14 23 is the best we have.</p> <p>10:14 24 MR. DEW: Portions of my copy are 10:14 25 very hard to read. So if you have any</p>
<p style="text-align: center;">51</p> <p>10:11 1 the first executive director after Joe Verdi, 10:11 2 who was the founder of MARTA.</p> <p>10:11 3 Q. Can we turn quickly again to page 10:11 4 15? Having looked at the three paragraphs 10:11 5 under the section entitled Competitive Analysis 10:11 6 Program and considering our discussion before 10:12 7 the break, do these three paragraphs fairly 10:12 8 reflect what MARTA was doing in terms of 10:12 9 competitive analysis?</p> <p>10:12 10 MR. DEW: I just reiterate the 10:12 11 objection that the witness hasn't had a 10:12 12 chance to look at the entire document; 10:12 13 and, therefore, is testifying to these 10:12 14 paragraphs out of context of the entire 10:12 15 document.</p> <p>10:12 16 THE WITNESS: Well, yes, it's 10:12 17 promoting the idea that this is something 10:12 18 that maybe MARTA can do on behalf of all 10:12 19 the members. And that's the basic theme 10:12 20 of any buying group.</p> <p>10:12 21 If -- if you want to set up a 10:12 22 program with Fisher and Paykel and you've 10:12 23 got 70 members that buy Fisher and Paykel, 10:12 24 you could have 70 meetings or you can have 10:12 25 one. It's more efficient to have the one.</p>	<p>10:14 1 trouble with any of the portions, please 10:14 2 tell me which ones; and we'll make sure we 10:14 3 identify those.</p> <p>10:14 4 THE WITNESS: I don't think I can 10:14 5 read this. The second page is better than 10:14 6 the first. Okay.</p> <p>10:16 7 BY MR. LAU:</p> <p>10:16 8 Q. Mr. Mann, do you recognize this 10:16 9 document?</p> <p>10:16 10 A. I don't remember it, but it's my 10:16 11 style. It's under my name. So the bottom part 10:16 12 I remember.</p> <p>10:16 13 Q. And what is this document?</p> <p>10:16 14 A. This is a bulletin that I sent out 10:16 15 regarding a shortage of plasma.</p> <p>10:16 16 Q. Okay. When you say "bulletin," 10:16 17 what do you mean by that?</p> <p>10:16 18 A. I sent out correspondence almost 10:16 19 every day regarding programs, events, pricing. 10:17 20 So this has to do with the period of time that 10:17 21 we were unable to get -- this is towards the 10:17 22 end of October 2005 -- we were unable to get 10:17 23 orders filled for Toshiba plasma sets, and we 10:17 24 had been told that there was shortage 10:17 25 nationally; and they just didn't have enough.</p>

<p style="text-align: center;">54</p> <p>10:17 1 Everybody was going to get a small percentage 10:17 2 of what they ordered until the flow increased 10:17 3 and they could catch up.</p> <p>10:17 4 Q. To -- to whom were bulletins sent?</p> <p>10:17 5 A. All members.</p> <p>10:17 6 Q. Okay. If you turn to the second 10:17 7 page please, the paragraph that begins, "In 10:18 8 order to ascertain," do you see that paragraph?</p> <p>10:18 9 A. Yes.</p> <p>10:18 10 Q. And let me just read the sentence 10:18 11 that I care about. Quote, "In order to 10:18 12 ascertain the actual situation, MARTA requests 10:18 13 all Toshiba dealers shop at least one Best Buy 10:18 14 store over the next few days," end quote. Do 10:18 15 you see that sentence?</p> <p>10:18 16 A. Yes.</p> <p>10:18 17 Q. Is that an isolated instance of -- 10:18 18 well, let me take a step back. In fact, do you 10:18 19 recall MARTA actually requesting dealers to 10:18 20 shop Best Buy stores in this instance?</p> <p>10:18 21 MR. DEW: Objection. Asked and 10:18 22 answered.</p> <p>10:18 23 THE WITNESS: I'm pretty sure if I 10:18 24 sent this bulletin out.</p> <p>25</p>	<p>10:20 1 -- asking the members to engage in such a shop 10:20 2 at Best Buy, that was an accepted business 10:20 3 practice, correct?</p> <p>10:20 4 MR. DEW: Objection. Objection to 10:20 5 form and vague.</p> <p>10:20 6 THE WITNESS: But in my view, it's 10:20 7 quite acceptable for dealers to shop at 10:20 8 other dealers.</p> <p>10:20 9 BY MR. LAU:</p> <p>10:20 10 Q. And it occurs regularly, correct?</p> <p>10:20 11 MR. DEW: Objection to form.</p> <p>10:20 12 THE WITNESS: It occurs all the 10:20 13 time. Sometimes shoppers are thrown out. 10:20 14 National accounts get very fussy. Some 10:20 15 shoppers overdo it and try to take 10:20 16 pictures.</p> <p>10:20 17 But gathering information by 10:20 18 shopping on the store floor in my mind is 10:20 19 not only common practice, it's kind of 10:20 20 public domain. It's wide open to anybody 10:20 21 who walks in.</p> <p>10:20 22 BY MR. LAU:</p> <p>10:20 23 Q. You said that this e-mail appears 10:21 24 to be written in the style of your e-mails, 10:21 25 correct?</p>
<p style="text-align: center;">55</p> <p>10:18 1 BY MR. LAU:</p> <p>10:18 2 Q. Okay.</p> <p>10:18 3 A. I don't think this is made up.</p> <p>10:18 4 This is something that I did towards the end of 10:18 5 my time at MARTA.</p> <p>10:18 6 Q. Other than this one instance, can 10:19 7 you think of other instances where MARTA 10:19 8 requested its members to shop at dealers like 10:19 9 Best Buy or Circuit City?</p> <p>10:19 10 MR. DEW: Objection.</p> <p>10:19 11 THE WITNESS: I can't recall, but 10:19 12 there well could have been other times.</p> <p>10:19 13 BY MR. LAU:</p> <p>10:19 14 Q. Okay. And what would be the 10:19 15 purpose of making this request to members?</p> <p>10:19 16 A. Well, this particular case involved 10:19 17 us being told that we can't ship anybody; and 10:19 18 we're just making sure that everybody is 10:19 19 suffering the way we're suffering.</p> <p>10:19 20 And the indication is from at least 10:19 21 this one dealer who responded here that in 10:19 22 Buffalo, Best Buy had plenty of these sets. So 10:19 23 we didn't have them, but Best Buy had them. 10:19 24 And that's a competitive disadvantage.</p> <p>10:20 25 Q. And so you would agree that asking</p>	<p>10:21 1 A. Yes. I'm pretty certain this is 10:21 2 something that I sent out.</p> <p>10:21 3 Q. And let me just ask, did MARTA rely 10:21 4 upon this e-mail in the normal course of its 10:21 5 business?</p> <p>10:21 6 MR. DEW: Objection. The witness 10:21 7 can't testify as to what the company did 10:21 8 or relied upon. He's not here as a 10:21 9 witness --</p> <p>10:21 10 BY MR. LAU:</p> <p>10:21 11 Q. In you -- in your capacity as 10:21 12 executive director, would you use e-mails like 10:21 13 this?</p> <p>10:21 14 A. I sent e-mails on a routine basis 10:21 15 to inform membership of changes, new products 10:21 16 that were coming, prices, industry events that 10:21 17 were taking place, categories that I thought 10:21 18 they ought to take a look at, maybe get 10:21 19 involved in.</p> <p>10:21 20 If they weren't selling recliners 10:21 21 they ought to think about it. It's very 10:21 22 profitable. People have to sit down when they 10:21 23 watch TV. So it's kind of a fit.</p> <p>10:22 24 So I sent a tremendous amount, I 10:22 25 think, of correspondence out.</p>

<p style="text-align: center;">58</p> <p>10:22 1 Q. And this would be an example of one 10:22 2 of these e-mails that you sent to MARTA 10:22 3 membership, correct?</p> <p>10:22 4 MR. DEW: Objection. I don't think 10:22 5 the witness was done answering the 10:22 6 question.</p> <p>10:22 7 THE WITNESS: This bulletin, No. 10:22 8 E-2125, I'm not -- I don't remember as 10:22 9 well as I used to. E means it's 10:22 10 electronics. All the bulletins that 10:22 11 started with A had to do with appliances, 10:22 12 and I had another letter. Maybe it was O 10:22 13 for other.</p> <p>10:22 14 But primarily we were in the 10:22 15 appliance/electronics field. And the 10:22 16 numbers were consecutive. So this way 10:22 17 anyone who had a hole in their three-ring 10:22 18 binder and they went from 2123 to 2125 was 10:22 19 missing 2124 and we would request and sent 10:23 20 out that one as a backup.</p> <p>10:23 21 So we were trying to do a better 10:23 22 job using e-mail; whereas, in my prior job 10:23 23 at NATM, we pretty much faxed everything. 10:23 24 A lot of paper and telephone wires tangled 10:23 25 up that way.</p>	<p>10:25 1 Q. Does it appear to be -- again, like 10:25 2 the earlier e-mail, an e-mail that you would 10:25 3 typically see when you were an executive 10:25 4 director of MARTA?</p> <p>10:25 5 A. Well, the typical e-mail that we 10:25 6 sent out would explain programs and attach 10:25 7 Excel files for pricing or somehow explain 10:25 8 something that was going on.</p> <p>10:25 9 This was one of the relatively rare 10:25 10 times that I was trying to find out whether we 10:25 11 were getting the runaround or not. Somebody -- 10:25 12 it could have been Mike Guida. It could have 10:25 13 been Jerry Satori. It could have been some 10:26 14 other executive at Toshiba that casually said 10:26 15 well, nobody's got them. You know, we're all 10:26 16 suffering. Everybody's in short supply, and I 10:26 17 wanted to make sure that that was accurate. 10:26 18 Which is why the initial e-mail went out. And 10:26 19 at least based on these responses you've shown 10:26 20 me so far, it looks like it wasn't accurate.</p> <p>10:26 21 Q. Would this be the type of e-mail 10:26 22 that would be generated and received by MARTA 10:26 23 in the normal course of its business?</p> <p>10:26 24 A. This was an unusual -- 10:26 25 MR. DEW: Just objection. Again,</p>
<p style="text-align: center;">59</p> <p>10:23 1 BY MR. LAU:</p> <p>10:23 2 Q. So to answer my question, would 10:23 3 this be an example of an e-mail that you would 10:23 4 send to MARTA's members?</p> <p>10:23 5 A. Yes.</p> <p>10:23 6 Q. And does this e-mail appear to be 10:23 7 accurate?</p> <p>10:23 8 A. Yes.</p> <p>10:23 9 Q. And does this e-mail appear to be 10:23 10 complete?</p> <p>10:23 11 A. Yes.</p> <p>10:23 12 Q. Thank you. You can put that 10:23 13 document aside.</p> <p>10:23 14 I'm going to hand to the witness 10:24 15 another document that's been previously marked 10:24 16 as an Exhibit. This is Exhibit 3254, an e-mail 10:24 17 chain at the top from MARTA Cooperative to 10:24 18 Warren Mann dated November 2, 2005.</p> <p>10:24 19 Please review this e-mail and let 10:24 20 me know once you've had a chance to do so.</p> <p>10:24 21 A. (Witness complies.) Okay.</p> <p>10:24 22 Q. Mr. Mann, do you recognize this 10:25 23 document?</p> <p>10:25 24 A. I don't remember it. It seems kind 10:25 25 of routine though.</p>	<p style="text-align: center;">61</p> <p>10:26 1 he isn't here to testify about MARTA.</p> <p>10:26 2 BY MR. LAU:</p> <p>10:26 3 Q. Go ahead and answer the question.</p> <p>10:26 4 In your capacity as executive director of 10:26 5 MARTA --</p> <p>10:26 6 A. This was unusual circumstances.</p> <p>10:26 7 Generally, we trusted and considered ourselves 10:26 8 to have a very good relationship with the 10:26 9 vendors.</p> <p>10:26 10 Q. Okay.</p> <p>10:26 11 A. In this case, obviously, I doubted 10:26 12 that we were being told the truth.</p> <p>10:26 13 Q. Does this appear to be -- does this 10:27 14 e-mail appear to be accurate?</p> <p>10:27 15 A. Yes.</p> <p>10:27 16 Q. Does it appear to be complete?</p> <p>10:27 17 A. Yes.</p> <p>10:27 18 MR. DEW: Objection as to vague.</p> <p>10:27 19 BY MR. LAU:</p> <p>10:27 20 Q. When I say "complete," Mr. Mann, 10:27 21 does it appear that this is the entire e-mail 10:27 22 as opposed to half an e-mail? That's what I 10:27 23 mean by completeness. Do you understand?</p> <p>10:27 24 A. The whole thread is not here, but 10:27 25 it appears to me that Al Ruiz from Colder's is</p>

<p style="text-align: center;">62</p> <p>10:27 1 responding to the earlier e-mail that I sent 10:27 2 out, E-2125 on October 29. It took him five 10:27 3 days to get back to me. So he didn't jump 10:27 4 through hoops to get me -- but he got me the 10:27 5 information.</p> <p>10:27 6 So what's missing from here is 10:27 7 probably what prompted him to go in and check; 10:27 8 but other than that, it's a complete e-mail. 10:27 9 Jeff Soko is the guy that I write to at the top 10:27 10 of this, and I'm saying make sure that AI gets 10:28 11 his credit for responding to our request for 10:28 12 information.</p> <p>10:28 13 Q. I'm glad you mentioned that because 10:28 14 that was my next question.</p> <p>10:28 15 Was it -- was it common for MARTA 10:28 16 to provide its members a credit?</p> <p>10:28 17 MR. DEW: Objection. Again, he's 10:28 18 not here to testify on behalf of MARTA.</p> <p>10:28 19 MR. LAU: Mr. Dew, that's fine. I 10:28 20 can appreciate your objections; however, 10:28 21 please wait until I've completed my 10:28 22 question.</p> <p>10:28 23 MR. DEW: Fair enough.</p> <p>10:28 24 MR. LAU: Thank you.</p> <p>25</p>	<p>10:29 1 Q. Correct. 10:29 2 A. And this was a relatively unusual 10:29 3 circumstance. I don't -- I wouldn't be 10:29 4 surprised if there was an occasion over seven 10:29 5 years, other than this one, where we rewarded 10:29 6 the dealer for being responsive. But mostly we 10:30 7 relied on their good will and their 10:30 8 self-serving nature to respond to requests; and 10:30 9 mostly they came through.</p> <p>10:30 10 In this case I think I was looking 10:30 11 for something very fast. Take a look at the 10:30 12 period. This is now coming up on Black Friday. 10:30 13 We've got a lot of people that relied on 10:30 14 Toshiba. It was our largest electronics 10:30 15 vendor; and all of a sudden, this critical 10:30 16 product, 52 -- 42- and 50-inch flat panel sets 10:30 17 mysteriously are gone. It's too late in the 10:30 18 season for us to get some other supplier 10:30 19 because nobody has any inventory left at that 10:30 20 point. This was a real sore point in what was 10:30 21 generally a very good relationship.</p> <p>10:30 22 Q. Can you think of, Mr. Mann, other 10:31 23 instances where MARTA requested information 10:31 24 from its members about what's occurring in the 10:31 25 market?</p>
<p style="text-align: center;">63</p> <p>10:28 1 BY MR. LAU: 10:28 2 Q. Let's try this again. Mr. Mann, do 10:28 3 you see on the top part of the e-mail the 10:28 4 sentence that reads, quote, "All dealers who 10:28 5 responded to the survey will receive a credit 10:28 6 of a hundred from 24200 Toshiba funds," end 10:28 7 quote. Do you see that sentence? 10:28 8 A. I see that, yes. 10:28 9 Q. Okay. Can you tell me what's 10:29 10 occurring in that sentence? 10:29 11 A. That's me instructing our 10:29 12 accounting guy to make sure that this dealer 10:29 13 gets a credit because he responded to our 10:29 14 request. 10:29 15 Q. Okay. Other than this specific 10:29 16 instance, can you recall other instances when 10:29 17 you directed MARTA employees to provide a 10:29 18 credit to members who provided MARTA with 10:29 19 information about what's occurring in the 10:29 20 market? 10:29 21 MR. DEW: Objection. Confusing. 10:29 22 BY MR. LAU: 10:29 23 Q. Do you understand that question? 10:29 24 A. I do. You're asking me if this was 10:29 25 a routine practice it sounds like.</p>	<p>10:31 1 MR. DEW: Objection. Again, he's 10:31 2 not here to testify on behalf of MARTA. 10:31 3 BY MR. LAU: 10:31 4 Q. In your capacity -- let me rephrase 10:31 5 the question. 10:31 6 In your capacity as executive 10:31 7 director from June 1999 to January 2006, can 10:31 8 you think of instances where either you or 10:31 9 employees under your direction requested 10:31 10 members to provide information about what's 10:31 11 occurring in the market? 10:31 12 A. Yes. 10:31 13 Q. Just describe those instances for 10:31 14 me, please. 10:31 15 A. 10:31 16 MR. DEW: Objection. Vague. 10:31 17 THE WITNESS: We sat down to 10:31 18 negotiate our annual program. I didn't do 10:32 19 that by myself. I would draw on the 10:32 20 talent within the group and use various 10:32 21 dealers. 10:32 22 Over the course of my years at 10:32 23 MARTA, almost every dealer at one time or 10:32 24 another had gotten involved in some 10:32 25 committee somehow. And if we were going</p>

<p style="text-align: center;">66</p> <p>10:32 1 to go into Benton Harbor and sit down with 10:32 2 Whirlpool to talk about what we want to be 10:32 3 focus models and what we need for pricing 10:32 4 -- and, of course, whenever you asked for 10:32 5 a price, the very first thing the 10:32 6 manufacturer asked is how many are you 10:32 7 going to buy. And all of that 10:32 8 information, it would have been foolish 10:32 9 for me to try to do on my own, I never 10:32 10 owned a store. So I used the retail 10:32 11 network.</p> <p>10:32 12 In the course of them preparing, 10:32 13 they bring a lot of information, what was 10:32 14 going on in the marketplace. And that was 10:33 15 most welcome.</p> <p>10:33 16 BY MR. LAU:</p> <p>10:33 17 Q. And what type of information would 10:33 18 they provide?</p> <p>10:33 19 A. What models were being advertised 10:33 20 in their local newspaper or the inserts, what 10:33 21 prices, what brands, what was changing.</p> <p>10:33 22 There's an ebb and flow to market share.</p> <p>10:33 23 Products grow and shrink.</p> <p>10:33 24 Q. Can you think of other instances 10:33 25 where you or MARTA employees under your</p>	<p>10:34 1 somebody for something. We didn't really have 10:34 2 money for that type of stuff. This was kind of 10:34 3 a unique situation.</p> <p>10:34 4 But in asking for competitive 10:35 5 information, I wanted it all the time.</p> <p>10:35 6 Q. And what type of competitive 10:35 7 information would you find to be useful?</p> <p>10:35 8 A. What brands are carried and 10:35 9 featured by competitive stores. What models, 10:35 10 what price, what promotion, what they were 10:35 11 doing. Are they giving free delivery? Was 10:35 12 there a rebate? Was the rebate a 10:35 13 manufacturer's rebate? Was it a manufacturer's 10:35 14 rebate that we weren't offered? What line got 10:35 15 thrown out?</p> <p>10:35 16 Q. And you found this was important 10:35 17 information to gather?</p> <p>10:35 18 A. Quite.</p> <p>10:35 19 Q. And why was that?</p> <p>10:35 20 A. Because the manufacturer that just 10:35 21 lost their facings at Walmart, suddenly has a 10:36 22 lot of product; and they need to be somebody to 10:36 23 buy it, and they are much more flexible in what 10:36 24 they sell it for because nobody wants to sit on 10:36 25 a lot of inventory and hope that eventually it</p>
<p style="text-align: center;">67</p> <p>10:33 1 direction requested members to provide 10:33 2 information about what's occurring in the 10:33 3 market?</p> <p>10:33 4 MR. DEW: Objection.</p> <p>10:33 5 THE WITNESS: There were few that 10:33 6 were as broad based as this particular 10:34 7 one; but in almost every negotiating 10:34 8 meeting that I went into, I would talk 10:34 9 with the dealers who were on that 10:34 10 committee ahead of time so that we'd have 10:34 11 a handle on what we were going to ask for, 10:34 12 what we needed, what were the right 10:34 13 products.</p> <p>10:34 14 So to answer your question, this 10:34 15 was part of my routine. I did this all 10:34 16 the time.</p> <p>10:34 17 BY MR. LAU:</p> <p>10:34 18 Q. Can you think of any other 10:34 19 instances?</p> <p>10:34 20 A. Other than all the time?</p> <p>10:34 21 Q. Well, specific examples so that I 10:34 22 can understand.</p> <p>10:34 23 A. You are talking about a decade or 10:34 24 more ago. I can say that in general it's very 10:34 25 rare for me to go out and actually reward</p>	<p>10:36 1 gets gone. They want to turn it into cash. 10:36 2 So if I find out that Orion got 10:36 3 thrown out because Sharp went into Walmart and 10:36 4 Orion is looking for somebody to give them 10:36 5 support, that's a good time for me to pick up 10:36 6 the phone and talk to Orion.</p> <p>10:36 7 Q. Mr. Mann, my realtime is not 10:36 8 working. We're going to go off the record for 10:36 9 two minutes and get it working again.</p> <p>10:36 10 A. Sure.</p> <p>10:36 11 Q. And then we'll go back on the 10:36 12 record.</p> <p>10:36 13 THE VIDEOGRAPHER: Thank you. The 10:36 14 time now is approximately 10:37 a.m. 10:36 15 We're going off the record.</p> <p>10:36 16 (Whereupon, a short break was 10:42 17 taken.)</p> <p>10:42 18 THE VIDEOGRAPHER: The time now is 10:42 19 10:42 a.m., and we're back on the record.</p> <p>10:42 20 BY MR. LAU:</p> <p>10:42 21 Q. Mr. Mann, I'm going to hand another 10:42 22 document to you. This document has already 10:42 23 been marked as an exhibit, Exhibit No. 2497 10:42 24 CRT-MARTA-0008537. If you could please take a 10:42 25 look at this document, review it, and let me</p>

<p style="text-align: center;">70</p> <p>10:42 1 know when you have had a chance to do so?</p> <p>10:42 2 A. (Witness complies.) Anyway, yes.</p> <p>10:42 3 I know this document very well. And by the</p> <p>10:42 4 way, the dealer whose name I couldn't dredge up</p> <p>10:42 5 before -- the coffee worked. His name is Pat</p> <p>10:43 6 Goff.</p> <p>10:43 7 Q. Who's Pat Goff?</p> <p>10:43 8 A. Pat Goff was a retailer of two</p> <p>10:43 9 stores, one in El Paso and one in, I think, Las</p> <p>10:43 10 Cruces, New Mexico.</p> <p>10:43 11 Q. Do you recall the names of the</p> <p>10:43 12 stores per chance?</p> <p>10:43 13 A. You know, I think it was called Pat</p> <p>10:43 14 -- Pat Goff's.</p> <p>10:43 15 Q. It's not -- it's not that</p> <p>10:43 16 important. Thank you, Mr. Mann. So this</p> <p>10:43 17 document, do you recognize this document?</p> <p>10:43 18 A. Yes.</p> <p>10:43 19 Q. And what is this document?</p> <p>10:43 20 A. This is the shopping report that I</p> <p>10:43 21 mentioned before where he had a woman who would</p> <p>10:43 22 go in and take down information and then send</p> <p>10:43 23 it to us.</p> <p>10:43 24 Q. Okay. And what type of</p> <p>10:43 25 information -- so this is the guy in Texas, Pat</p>	<p>10:45 1 Q. Do you recall the time period</p> <p>10:45 2 that --</p> <p>10:45 3 A. Well, it's dated. These all are</p> <p>10:45 4 dated January 30, 2005.</p> <p>10:45 5 Q. A different -- different question.</p> <p>10:45 6 Do you recall the time period over which</p> <p>10:45 7 Priscilla was providing this information to the</p> <p>10:45 8 guy in Texas who was providing it to MARTA?</p> <p>10:45 9 A. When you asked before, I said it's</p> <p>10:45 10 approximately 2004. I stand by that.</p> <p>10:45 11 Q. I mean, so this activity just</p> <p>10:45 12 occurred in 2004?</p> <p>10:45 13 A. It --</p> <p>10:45 14 MR. DEW: Objection. Misstates</p> <p>10:45 15 prior testimony.</p> <p>10:45 16 THE WITNESS: I don't know exactly</p> <p>10:45 17 when it started, but I believe it started</p> <p>10:45 18 in 2004.</p> <p>10:45 19 BY MR. LAU:</p> <p>10:45 20 Q. Do you know when it ended?</p> <p>10:45 21 A. I think he lost her in the middle</p> <p>10:46 22 of the year. We ended up not being able to do</p> <p>10:46 23 this.</p> <p>10:46 24 Q. Okay. Did he find a replacement</p> <p>10:46 25 for Priscilla?</p>
<p style="text-align: center;">71</p> <p>10:43 1 Goff; and this is the shopper that he hired for</p> <p>10:43 2 \$50 a week to provide this type of information?</p> <p>10:43 3 A. Approximately. You know, it wasn't</p> <p>10:43 4 a great deal of money.</p> <p>10:43 5 Q. Okay.</p> <p>10:44 6 A. And the first page is Best Buy.</p> <p>10:44 7 This is what the Best Buy floor looked like.</p> <p>10:44 8 These were the products in the order they had</p> <p>10:44 9 them laid out, the model numbers, and the</p> <p>10:44 10 prices that they had tagged them at.</p> <p>10:44 11 Q. And if you look at the following</p> <p>10:44 12 pages, we see a slightly different format. Do</p> <p>10:44 13 you recognize what's going on in pages 2 and 3</p> <p>10:44 14 and 4? Is that similar information for Best</p> <p>10:44 15 Buy?</p> <p>10:44 16 A. No. Page 2 is Circuit City. If</p> <p>10:44 17 you look to the, kind of, the upper left</p> <p>10:44 18 portion.</p> <p>10:44 19 Q. Oh, I see.</p> <p>10:44 20 A. And there's a woman's name</p> <p>10:44 21 Priscilla. So she has a snapshot here of what</p> <p>10:44 22 is on the Circuit City floor. And I don't know</p> <p>10:45 23 if the next page is a continuation of Circuit</p> <p>10:45 24 City or not. The final store is CompUSA,</p> <p>10:45 25 page 4.</p>	<p>10:46 1 MR. DEW: Objection. Calls for</p> <p>10:46 2 speculation.</p> <p>10:46 3 THE WITNESS: I don't know.</p> <p>10:46 4 BY MR. LAU:</p> <p>10:46 5 Q. Can you think of any other -- any</p> <p>10:46 6 other instances where members would provide</p> <p>10:46 7 this type of detailed information to MARTA on a</p> <p>10:46 8 regular basis?</p> <p>10:46 9 A. No.</p> <p>10:46 10 Q. So when -- but you can think of</p> <p>10:46 11 other instances when members would provide</p> <p>10:46 12 information to MARTA about, for example, a</p> <p>10:46 13 price for, say, a Toshiba product at the Best</p> <p>10:46 14 Buy store, correct?</p> <p>10:46 15 MR. DEW: Objection. I'm confused</p> <p>10:46 16 by the question. Are you asking if the</p> <p>10:47 17 witness has said that if he can, as he</p> <p>10:47 18 sits, here recall that?</p> <p>10:47 19 MR. LAU: Let's see if the witness</p> <p>10:47 20 understands the question.</p> <p>10:47 21 BY MR. LAU:</p> <p>10:47 22 Q. Do you understand my question,</p> <p>10:47 23 Mr. Mann?</p> <p>10:47 24 A. You're wondering if anybody ever</p> <p>10:47 25 responded to these reports?</p>

<p style="text-align: center;">74</p> <p>10:47 1 Q. Yes.</p> <p>10:47 2 A. Yes.</p> <p>10:47 3 Q. Okay. How often?</p> <p>10:47 4 A. Frequently.</p> <p>10:47 5 Q. And what type of information would</p> <p>10:47 6 they provide?</p> <p>10:47 7 A. Mostly to tell me I was wrong or</p> <p>10:47 8 that the report was wrong.</p> <p>10:47 9 Q. Okay.</p> <p>10:47 10 A. Generally, dealers don't care if</p> <p>10:47 11 they get such a report and in their local</p> <p>10:47 12 market they find that the price is higher,</p> <p>10:47 13 that's okay. But if they found the price was</p> <p>10:47 14 lower, they kind of want to wake me up to the</p> <p>10:47 15 fact that this is okay; nice to have this, but</p> <p>10:47 16 you're wrong because this particular model is</p> <p>10:47 17 selling for some less, whatever the price was.</p> <p>10:47 18 Or that may be what they tag it on</p> <p>10:47 19 the floor at, but they just ran it in their</p> <p>10:47 20 circular at and give me a different price. Or</p> <p>10:47 21 that's the price, but they're offering free</p> <p>10:48 22 delivery; or they're offering factory rebate or</p> <p>10:48 23 a store rebate or gift with purchase.</p> <p>10:48 24 So anything which would modify or</p> <p>10:48 25 make this information incorrect, I guess,</p>	<p>10:50 1 during your time at MARTA; is that correct?</p> <p>10:50 2 MR. DEW: Objection. Misstates the</p> <p>10:50 3 witness's prior testimony.</p> <p>10:50 4 THE WITNESS: If I could get the</p> <p>10:50 5 information. I was fortunate in that</p> <p>10:50 6 while I was working in Arizona -- at this</p> <p>10:50 7 time I think I was still living there. My</p> <p>10:50 8 wife never moved, and that isn't the</p> <p>10:50 9 fortunate part. The fortunate part is</p> <p>10:50 10 that we're in New Jersey, and we get the</p> <p>10:50 11 New York Times on Saturday or a hunk of</p> <p>10:50 12 it. So all of the stuff which is</p> <p>10:50 13 preprinted comes with the Saturday paper.</p> <p>10:50 14 So I got to see the Sunday ads for Best</p> <p>10:50 15 Buy on Saturday.</p> <p>10:50 16 BY MR. LAU:</p> <p>10:50 17 Q. And then you would provide this</p> <p>10:50 18 information to the MARTA membership; is that</p> <p>10:50 19 correct?</p> <p>10:50 20 A. From time to time, yes.</p> <p>10:51 21 Q. And why would -- from your</p> <p>10:51 22 understanding, why would the MARTA membership</p> <p>10:51 23 be interested in this type of information?</p> <p>10:51 24 A. Okay. I'll tell you. If they have</p> <p>10:51 25 a Sanyo cube refrigerator -- what time is this?</p>
<p style="text-align: center;">75</p> <p>10:48 1 accurately to say would make it more correct or</p> <p>10:48 2 at least correct for their market. I would get</p> <p>10:48 3 feedback like that.</p> <p>10:48 4 Q. Okay. Thank you. I'm going to</p> <p>10:48 5 give you another document to look at. Again,</p> <p>10:48 6 this is a document that's been previously</p> <p>10:48 7 marked as an exhibit. This is Exhibit 2498.</p> <p>10:48 8 It is a July 19, 2002, e-mail from MARTA</p> <p>10:49 9 Cooperative.</p> <p>10:49 10 Please take a chance to review</p> <p>10:49 11 their e-mail, and let me know when you've had a</p> <p>10:49 12 chance to do so.</p> <p>10:49 13 A. (Witness complies.) Okay.</p> <p>10:49 14 Q. Mr. Mann, do you recognize this</p> <p>10:49 15 document?</p> <p>10:49 16 A. I recognize what it looks like.</p> <p>10:49 17 You know, the specific -- I sent out hundreds</p> <p>10:49 18 of documents so -- every year. But this is</p> <p>10:49 19 something advising all of the membership of an</p> <p>10:49 20 upcoming ad. That's Best Buy. It looks like a</p> <p>10:49 21 circular. As a matter of fact, it has to be a</p> <p>10:49 22 circular because that's the only time you could</p> <p>10:49 23 ever get this information early.</p> <p>10:50 24 Q. So this document appears to follow</p> <p>10:50 25 the style of document that you would generate</p>	<p>10:51 1 July, yeah, back to school -- and they've got</p> <p>10:51 2 it sitting on their floor at \$99, and they're</p> <p>10:51 3 going to tag at it at \$99; and they're really</p> <p>10:51 4 not paying that much attention to it because,</p> <p>10:51 5 you know, when your kid goes back to school,</p> <p>10:51 6 you're going to buy him that refrigerator</p> <p>10:51 7 whether it's, 69, 79, or \$99.</p> <p>10:51 8 But if it's \$99 on your floor and</p> <p>10:51 9 somebody's coming in to look and they just saw</p> <p>10:51 10 this add and you are disadvantaged by \$30,</p> <p>10:51 11 that's kind of bad.</p> <p>10:51 12 Q. Was this an isolated example of</p> <p>10:51 13 providing MARTA membership with an early look</p> <p>10:51 14 at a competitor's add, or did it occur on a</p> <p>10:52 15 regular basis?</p> <p>10:52 16 A. As often as I had the time to do it</p> <p>10:52 17 and could get it, I would provide the</p> <p>10:52 18 information. Whether that's 20 or 30 weeks out</p> <p>10:52 19 of the year, I don't know; but it's as</p> <p>10:52 20 frequently as I could. If I had this</p> <p>10:52 21 information, I'd get it out to the membership.</p> <p>10:52 22 This is very good competitive information to</p> <p>10:52 23 have.</p> <p>10:52 24 MR. DEW: The witness started to</p> <p>10:52 25 answer before I could object. I'll just</p>

<p style="text-align: center;">78</p> <p>10:52 1 object to the form of that question.</p> <p>10:52 2 THE WITNESS: I'm sorry.</p> <p>10:52 3 MR. DEW: That's okay.</p> <p>10:52 4 BY MR. LAU:</p> <p>10:52 5 Q. Does this e-mail appear to be</p> <p>10:52 6 complete?</p> <p>10:52 7 A. Yes.</p> <p>10:52 8 Q. Does this e-mail appear to be</p> <p>10:52 9 accurate?</p> <p>10:52 10 A. I sent it to everybody. I'm sure</p> <p>10:52 11 it was as accurate as I could make it.</p> <p>10:52 12 Q. Thank you. You can put that</p> <p>10:52 13 document aside.</p> <p>10:53 14 I'm going to hand you a new</p> <p>10:53 15 document. This is a document that begins Bates</p> <p>10:53 16 No. CRT-MARTA-0026875, and it is an October 22,</p> <p>10:53 17 2001, e-mail sent from the MARTA Cooperative to</p> <p>10:53 18 MARTA.</p> <p>10:53 19 MR. LAU: This should be marked as</p> <p>10:53 20 Exhibit 4730.</p> <p>21 MS. KERN: Excuse me? 4 --</p> <p>22 MR. LAU: 4730. What was the</p> <p>23 question?</p> <p>24 MS. KERN: What was the exhibit</p> <p>25 number?</p>	<p>10:55 1 BY MR. LAU:</p> <p>10:55 2 Q. So the answer is yes to my</p> <p>10:55 3 question?</p> <p>10:55 4 A. Yes.</p> <p>10:55 5 Q. Thank you. And two more quick</p> <p>10:55 6 questions, then we'll talk about substance.</p> <p>10:55 7 Does this document appear to be</p> <p>10:55 8 accurate?</p> <p>10:55 9 A. Yes.</p> <p>10:55 10 Q. And does this document appear to be</p> <p>10:55 11 complete?</p> <p>10:55 12 A. To the best of my knowledge.</p> <p>10:55 13 Q. Okay. Thank you.</p> <p>10:55 14 Do you see in the subject line</p> <p>10:56 15 where there's a reference line to Walmart shop</p> <p>10:56 16 report?</p> <p>10:56 17 A. Yes.</p> <p>10:56 18 Q. What is a Walmart shop report, if</p> <p>10:56 19 you know?</p> <p>10:56 20 A. All retailers have various ways to</p> <p>10:56 21 gather information; most common is shopping</p> <p>10:56 22 reports. And while some don't like to do it</p> <p>10:56 23 and while some take exception when they're</p> <p>10:56 24 shopped, the most common practice is you know</p> <p>10:56 25 who's shopping; and you let them come in and do</p>
<p style="text-align: center;">79</p> <p>1 MR. LAU: 4730.</p> <p>2 MS. KERN: Thank you.</p> <p>3 (Whereupon, Exhibit No. 4730,</p> <p>4 E-mail, was marked for identification.)</p> <p>10:54 5 THE WITNESS: Okay.</p> <p>10:54 6 BY MR. LAU:</p> <p>10:54 7 Q. Mr. Mann, do you recognize this</p> <p>10:54 8 document?</p> <p>10:54 9 A. As I said before, it looks very --</p> <p>10:54 10 it's the type of thing I would have sent out.</p> <p>10:54 11 Q. And what is this document?</p> <p>10:54 12 A. It's a shopping report which shows</p> <p>10:55 13 the products that are on the Walmart floor in</p> <p>10:55 14 October of 2001 and their retail price.</p> <p>10:55 15 Q. Okay. And I know some of my</p> <p>10:55 16 questions are repetitive, but let me ask the</p> <p>10:55 17 question again.</p> <p>10:55 18 Would -- would MARTA generate these</p> <p>10:55 19 types of documents in the normal course of its</p> <p>10:55 20 business?</p> <p>10:55 21 MR. DEW: Objection. He's not here</p> <p>10:55 22 to testify on behalf of MARTA.</p> <p>10:55 23 THE WITNESS: If I had information</p> <p>10:55 24 like this, I would send it out.</p> <p>25</p>	<p>10:56 1 whatever they're going to do because it can't</p> <p>10:56 2 be that great a secret. It's what's on your</p> <p>10:56 3 floor. And the people that your competitor</p> <p>10:56 4 sends in to shop you, you let in. And your</p> <p>10:56 5 competitor lets your guy shop. And everybody's</p> <p>10:56 6 happy because everybody gets to take a look at</p> <p>10:56 7 the cards.</p> <p>10:57 8 Q. Where would -- where would MARTA</p> <p>10:57 9 receive the Walmart shop report from? What</p> <p>10:57 10 would be the source of that information?</p> <p>10:57 11 MR. DEW: Objection. Again, he's</p> <p>10:57 12 not here to testify on behalf of MARTA.</p> <p>10:57 13 THE WITNESS: This one could</p> <p>10:57 14 probably be me. When I was living in</p> <p>10:57 15 Arizona, I was all my by myself; and I had</p> <p>10:57 16 not much to do on weekends. So I could go</p> <p>10:57 17 in and just wander through and make little</p> <p>10:57 18 notes, and then I could summarize for</p> <p>10:57 19 everybody what's on the floor.</p> <p>10:57 20 The most important piece of</p> <p>10:57 21 information here is what models are they</p> <p>10:57 22 selling.</p> <p>10:57 23 Walmart works on short margin,</p> <p>10:57 24 usually 20 percent. Most dealers'</p> <p>10:57 25 overhead is 24, 27 percent. So if they</p>

<p style="text-align: center;">82</p> <p>10:57 1 sold everything at 20, they would be kind 10:57 2 of in trouble.</p> <p>10:57 3 The easiest thing to do is to find 10:57 4 out what Walmart has and then get 10:58 5 something that's under it or above it or 10:58 6 over on the side but somehow different. 10:58 7 Because if you're going to duke it out 10:58 8 with somebody the size of Walmart, the 10:58 9 chances are you're going to get crushed.</p> <p>10:58 10 BY MR. LAU:</p> <p>10:58 11 Q. So you recall instances where 10:58 12 you -- what would be the term you would use if 10:58 13 you would go to a Walmart to check on their 10:58 14 prices? What would be a fair term to use to 10:58 15 describe that practice?</p> <p>10:58 16 A. I call it a shopping report.</p> <p>10:58 17 Q. A shopping report. So you recall 10:58 18 doing shopping reports at Walmart, correct?</p> <p>10:58 19 A. Yes.</p> <p>10:58 20 Q. How many times did you do shopping 10:58 21 reports at Walmart?</p> <p>10:58 22 A. Every time I went to Walmart, I'd 10:58 23 look around. This extensive of a report, not 10:58 24 so frequently. Maybe I just had more time on 10:58 25 my hands, and I'm not a hundred percent sure</p>	<p>11:00 1 This is a fast-changing industry. So what's 11:00 2 super secret today is common knowledge 11:00 3 tomorrow. And what's a great deal today is 11:00 4 just like fish. It's old and smelly and tired 11:00 5 and weak so...</p> <p>11:00 6 But if there was something that was 11:00 7 more unusual, I would send that information out 11:00 8 to the membership.</p> <p>11:00 9 Q. Can you think of any other MARTA 11:00 10 employee other than yourself who did shopping 11:00 11 reports?</p> <p>11:00 12 A. I believe that Bill Bursley did 11:00 13 shopping reports as well. I don't know if 11:00 14 anybody else on our side did it. We didn't 11:01 15 need so much to do it ourselves. Plus we were 11:01 16 in a remote area comparatively, Scottsdale. 11:01 17 You get a lot more cutting-edge information in 11:01 18 LA, Chicago, and New York.</p> <p>11:01 19 Q. Before we move on. Who is Bill 11:01 20 Bursley again?</p> <p>11:01 21 A. Bill Bursley was our -- I can't 11:01 22 remember his title. He was like the general 11:01 23 manager. He was the No. 2 guy at MARTA.</p> <p>11:01 24 Q. So the shopping reports that you 11:01 25 and Mr. Bursley did were limited to this</p>
<p style="text-align: center;">83</p> <p>10:58 1 that I'm the one who did this. Maybe somebody 10:58 2 sent this in.</p> <p>10:58 3 But to this day, when I go into a 10:59 4 Best Buy store or a Walmart store, I look 10:59 5 around. I'm not buying a TV. I've got plenty, 10:59 6 but I still want to see what the prices are, 10:59 7 what the features are, what's changing. It's 10:59 8 just part of the market analysis.</p> <p>10:59 9 Q. During your time as executive 10:59 10 director at MARTA, do you recall doing shopping 10:59 11 reports at other retailers other than the 10:59 12 Walmart?</p> <p>10:59 13 A. Yes.</p> <p>10:59 14 Q. Which retailers do you recall doing 10:59 15 shopping reports at?</p> <p>10:59 16 A. Circuit City, Best Buy, Lowe's, 10:59 17 Sears, Home Depot, CompUSA.</p> <p>10:59 18 Q. You would do shopping reports.</p> <p>10:59 19 Would you write down what you would see?</p> <p>11:00 20 A. Yes. I didn't have anything more 11:00 21 sophisticated.</p> <p>11:00 22 Q. And what would you do with that 11:00 23 information?</p> <p>11:00 24 A. It depends. Sometimes -- the 11:00 25 majority of the information is of no value.</p>	<p>11:01 1 Scottsdale, Arizona, area, correct?</p> <p>11:01 2 MR. DEW: Objection. Misstates 11:01 3 prior testimony.</p> <p>11:01 4 THE WITNESS: No. His were because 11:01 5 that's where he lived.</p> <p>11:01 6 BY MR. LAU:</p> <p>11:01 7 Q. How about yours?</p> <p>11:01 8 A. When I was in New Jersey, it was 11:01 9 New Jersey. But if I went to someplace on a 11:01 10 trip, it was very common to go take a look at 11:01 11 stores. You always look at stores.</p> <p>11:02 12 Q. Would you be able to obtain 11:02 13 information about prices charged by these 11:02 14 retailers in other markets such as Chicago and 11:02 15 Los Angeles?</p> <p>11:02 16 A. If I was there and I had the time 11:02 17 and I, you know, I've got a few hours down 11:02 18 time. Chicago I'd go to an app store. If I 11:02 19 was in Los Angeles, I could go to an RC Willey 11:02 20 store.</p> <p>11:02 21 Q. What if you weren't traveling to 11:02 22 those cities, would the MARTA membership 11:02 23 provide information about the cities to the 11:02 24 extent they were located there?</p> <p>11:02 25 A. Yes.</p>

<p style="text-align: center;">86</p> <p>11:02 1 Q. And would that occur on a frequent 11:02 2 basis?</p> <p>11:02 3 MR. DEW: Objection. Vague.</p> <p>11:02 4 THE WITNESS: In the case of Pat 11:02 5 Goff, it happened routinely. We actually 11:02 6 paid for that information.</p> <p>11:02 7 BY MR. LAU:</p> <p>11:02 8 Q. Other than Pat Goff?</p> <p>11:02 9 A. Yes. I believe I mentioned 11:02 10 earlier, if something took place in the market, 11:03 11 I'd often hear about it first from retailers.</p> <p>11:03 12 Do you know what they're doing?</p> <p>11:03 13 I would send out encouraging notes.</p> <p>11:03 14 You should support this particular model. You 11:03 15 know, we own it right. We made a core model, 11:03 16 and you can make good money on it. That worked 11:03 17 great until a competitor decided to sell it 11:03 18 cheap. And nobody was shy about calling me up 11:03 19 and saying, well, you said we could make good 11:03 20 money on it. We can't make good money on it 11:03 21 here.</p> <p>11:03 22 Q. Take a look at the document again, 11:03 23 please. And look at -- well, in the first 11:03 24 paragraph, do you see there's a reference to 11:03 25 Black Friday ads. Do you see that?</p>	<p>11:04 1 A. Yes.</p> <p>11:04 2 Q. Take a look at the second sentence, 11:05 3 quote, "The combined intelligence-gathering 11:05 4 capability of 400 store managers represents an 11:05 5 enormous amount of data," end quote?</p> <p>11:05 6 A. Right.</p> <p>11:05 7 Q. Is that an accurate sentence?</p> <p>11:05 8 A. Yes.</p> <p>11:05 9 Q. And the "400 store managers," that 11:05 10 refers to the store managers of MARTA's 11:05 11 membership, correct?</p> <p>11:05 12 A. Correct.</p> <p>11:05 13 Q. And when the sentence refers to 11:05 14 "intelligence-gathering," what is that in 11:05 15 reference to?</p> <p>11:05 16 A. Well, it's not just store managers. 11:05 17 It's owners, store managers, and salespeople as 11:05 18 well. If you come into the store and you're 11:05 19 looking for something and I steer you to a 11:05 20 side-by-side refrigerator and tell you I'm 11:05 21 going to give you a special deal and you say, 11:05 22 you know what, that's not a bad deal; but I 11:05 23 just saw it for a 100 bucks less. Where?</p> <p>11:06 24 P.C. Richard. Ah. That's information I wish 11:06 25 to have if I can get it.</p>
<p style="text-align: center;">87</p> <p>11:03 1 A. Yes.</p> <p>11:03 2 Q. What does Black Friday mean in that 11:03 3 context?</p> <p>11:03 4 A. Black Friday is the day after 11:03 5 Thanksgiving. It's considered a --one of the 11:04 6 largest retail days of the year in appliance 11:04 7 and electronics, especially electronics.</p> <p>11:04 8 It's called Black Friday because 11:04 9 you can do so much business on that day, that 11:04 10 if you ran in the red all year long, maybe you 11:04 11 get back in the black because Black Friday did 11:04 12 a lot of revenue, made money.</p> <p>11:04 13 Of late black Friday has become a 11:04 14 time that retailers, especially national 11:04 15 accounts, pick certain models to sell at or 11:04 16 below cost just to make a statement to the 11:04 17 public.</p> <p>11:04 18 Q. Take a look at the second 11:04 19 paragraph. And let's look at some of the 11:04 20 sentences here. Do you see the first sentence, 11:04 21 "MARTA's membership covers substantial retail 11:04 22 geography." Do you see that sentence?</p> <p>11:04 23 A. Yes.</p> <p>11:04 24 Q. That's an accurate sentence, 11:04 25 correct?</p>	<p>11:06 1 So here what I'm doing is I'm 11:06 2 enjoining the membership to not just take that 11:06 3 information on a local basis, but to share it 11:06 4 with us so we know what's going on.</p> <p>11:06 5 Q. Do you see the next sentence that 11:06 6 reads, quote, "Request all members forward 11:06 7 shopping reports, ads, and other particulars 11:06 8 regarding competitive activity to MARTA," end 11:06 9 quote. Do you see that sentence?</p> <p>11:06 10 A. Yes.</p> <p>11:06 11 Q. Is that an accurate sentence?</p> <p>11:06 12 A. Yes.</p> <p>11:06 13 Q. Was this request for competitive 11:06 14 activity, was it an ongoing request on the 11:06 15 behalf of MARTA?</p> <p>11:06 16 A. Yes.</p> <p>11:06 17 Q. Okay. When I say "ongoing," from 11:06 18 the early days of your time as executive 11:06 19 director until you left, ongoing in that sense?</p> <p>11:07 20 A. Yes.</p> <p>11:07 21 Q. Thank you. Look at the third -- 11:07 22 the final sentence, quote, "Not only will the 11:07 23 negotiation capability of the committees be 11:07 24 enhanced, we will be able to circulate to the 11:07 25 group advanced information regarding</p>

<p style="text-align: center;">90</p> <p>11:07 1 advertising activity," end quote. Do you see 11:07 2 that sentence?</p> <p>11:07 3 A. Yes.</p> <p>11:07 4 Q. Is that sentence accurate?</p> <p>11:07 5 A. Yes.</p> <p>11:07 6 Q. When that sentence makes reference 11:07 7 to "committees," what's that in reference to?</p> <p>11:07 8 A. I used the membership as a group to 11:07 9 negotiate with vendors on. So if we met with 11:07 10 Frigidaire I would take, four, five, six of the 11:07 11 large Frigidaire dealers and we'd sit down 11:07 12 because those were the guys that knew what we 11:07 13 could sell. Those were the guys whose business 11:07 14 represented a significant percentage of our 11:07 15 total business.</p> <p>11:07 16 So if we had to give a volume 11:07 17 commitment, if they were on board and 11:07 18 represented half of it, I was pretty sure we 11:08 19 could make the number. They were the guys that 11:08 20 kept me straight.</p> <p>11:08 21 On the rare occasions where I would 11:08 22 stick my nose into stuff, I would often become 11:08 23 rudely awakened; like the time I picked a 11:08 24 19-cubic foot refrigerator and made that a core 11:08 25 model because I noticed it wasn't appearing in</p>	<p>11:09 1 people.</p> <p>11:09 2 A lot of the competitive activity 11:09 3 -- you know, I talked to you about pricing.</p> <p>11:09 4 But competitive activity also involves things 11:09 5 like what's being promoted and how it's being 11:09 6 promoted, bundling. So if you see something 11:10 7 where if you by this, you get this, that might 11:10 8 be a really good idea; and we could pick up on 11:10 9 somebody else's good idea and adopt it for our 11:10 10 own purposes.</p> <p>11:10 11 Using contests, pots and pans. I 11:10 12 used committees to come up with ideas like 11:10 13 that. So I used committees all the time. I 11:10 14 believed in the strength of the group and their 11:10 15 basic good retail capability.</p> <p>11:10 16 Q. Have you ever heard of the phrase 11:10 17 price points?</p> <p>11:10 18 A. Yes.</p> <p>11:10 19 Q. What does that term mean to you?</p> <p>11:10 20 A. Generally, it refers to what the 11:10 21 retail price is of a particular product and why 11:10 22 it's selected. Most retailers will use a price 11:10 23 of 499. They won't use a price of 502 because 11:10 24 499 sounds like it's less than 500, and 502 is 11:11 25 more than 500. Some price points are very</p>
<p style="text-align: center;">91</p> <p>11:08 1 any of the reports from NPD or other shopping 11:08 2 sources that we had, and I figured it's one 11:08 3 foot bigger and we own it at right price; and 11:08 4 that worked until the first guy called and 11:08 5 said, why would you pick that one. Oh, it's 11:08 6 not in the shopping report. We can make money 11:08 7 based on what it's selling for. We get a good 11:08 8 deal. He said, it sticks out into the kitchen. 11:08 9 You've got to walk around it. It's a really 11:08 10 stupid model. I didn't know the product that 11:08 11 well.</p> <p>11:08 12 The committees were the guys that 11:08 13 were actually the brain trust for MARTA, the 11:09 14 ones that knew the market, the competitors, 11:09 15 what our capability was, what the prices were. 11:09 16 They were an invaluable asset to us to get the 11:09 17 programs we have.</p> <p>11:09 18 Q. How many different committees did 11:09 19 MARTA have?</p> <p>11:09 20 A. A bunch, you know. The ones that 11:09 21 we used most frequently were appliance and 11:09 22 electronics. But I had a group that I had used 11:09 23 for audio. I had a group that I used for 11:09 24 computers. I had a group that I used for 11:09 25 service. We had at different times advertising</p>	<p>11:11 1 important, 399, 499, 599, 799. 699 is not an 11:11 2 important price point. To most consumers' 11:11 3 minds 699 is like 799. It's the same price. 11:11 4 So there are weak price points, 11:11 5 899, 699, 429 is a weak price point. Then 11:11 6 there are very strong natural price points. 11:11 7 Q. If you think in your mind of one of 11:11 8 the stronger price points, are those price 11:11 9 points sticky in the sense of if there's a 11:11 10 small increase in the cost, you might want to 11:11 11 still preserve that price point given its 11:11 12 importance?</p> <p>11:11 13 MR. DEW: Objection. Confusing. 11:11 14 BY MR. LAU:</p> <p>11:11 15 Q. Do you understand my question, 11:11 16 Mr. Mann?</p> <p>11:11 17 A. I do, and the answer's yes. It's a 11:11 18 -- that -- that was -- that was a major 11:11 19 concern.</p> <p>11:11 20 Part of the reason that we 11:11 21 considered ourselves more than just a buying 11:11 22 group, we were buying and merchandising is 11:12 23 because of our capability to do the billing. 11:12 24 We would sometimes absorb the price because if 11:12 25 the dealer needs to make at least 30 points,</p>

<p style="text-align: center;">94</p> <p>11:12 1 then you've got to sell it to him at 280 to go 11:12 2 399.99. You don't want it to be 409. And if 11:12 3 the manufacturer has a \$5 price increase, 11:12 4 you're either going to shorten their margin or 11:12 5 you're going to lose the price point. 11:12 6 But we had a third option. And the 11:12 7 third option was you know what, we'll raise the 11:12 8 price a dollar on six other items, but we'll 11:12 9 hold this critical price point because it's an 11:12 10 important part of our business. 11:12 11 Q. You're making reference to the 11:12 12 so-called core models; is that correct? 11:12 13 A. Yes. 11:12 14 Q. Okay. When you talked about 11:12 15 absorbing the cost, would that be something 11:12 16 that MARTA would do or MARTA's members would 11:12 17 do? 11:12 18 A. I don't think there was anything 11:12 19 that MARTA did that MARTA's members didn't do. 11:12 20 MARTA was still a cooperative. We were a 11:13 21 not-for-profit organization owned by the 11:13 22 members. Any money that I spent, I spent on 11:13 23 behalf of all the members. 11:13 24 By the way, a good reason to have a 11:13 25 committee because at least I could say, the</p>	<p style="text-align: center;">96</p> <p>11:14 1 let's change our -- let's change our example a 11:14 2 little bit. 11:14 3 Vendor now says 355. In your 11:14 4 experience as executive director of MARTA, what 11:14 5 would happen to that 499 price point? 11:15 6 MR. DEW: Objection. Confusing 11:15 7 question. 11:15 8 MS. KERN: Calls for speculation. 11:15 9 This is Sylvie Kern. 11:15 10 BY MR. LAU: 11:15 11 Q. Again, I don't want you to 11:15 12 speculate. Based on your experience -- you 11:15 13 were executive director at MARTA for a number 11:15 14 of years. You have an understanding of price 11:15 15 points. 11:15 16 In your experience when you saw a 11:15 17 situation where in our example the \$350 price 11:15 18 charged by the vendor was now 355, what would 11:15 19 be the impact on that 499 retail price charged 11:15 20 by the member -- 11:15 21 MS. KERN: Same objection. 11:15 22 Q. -- in your experience? 11:15 23 A. It depends. You know, that's a 11:15 24 slippage; but it's still over 25 points. So up 11:15 25 until 375, probably it would hold the price</p>
<p style="text-align: center;">95</p> <p>11:13 1 committee thought it was a good idea. It 11:13 2 wasn't just me. 11:13 3 Q. I just want to understand, do you 11:13 4 have an understanding for this idea about who's 11:13 5 absorbing the cost? 11:13 6 Let's say that there was a product 11:13 7 out there that the members are selling for at 11:13 8 \$4.99. You said that was one of the stronger 11:13 9 price points? 11:13 10 MR. DEW: Objection. Misstates 11:13 11 prior testimony. 11:13 12 THE WITNESS: \$499. 11:13 13 BY MR. LAU: 11:13 14 Q. Oh, 499? 11:13 15 A. Yes. 11:13 16 Q. I'm sorry. I misheard you. So 11:13 17 \$499, and that would be what the member would 11:14 18 charge as the retail price. Let's say in our 11:14 19 example, the price that the vendor would charge 11:14 20 in our initial example \$400, okay? 11:14 21 A. Well, let's use an example of 350. 11:14 22 That's much more likely. 11:14 23 Q. That's much more likely. Okay. 11:14 24 That's -- I'm going to use a realistic example. 11:14 25 So vendor charges 350, at retail 499. Then</p>	<p style="text-align: center;">97</p> <p>11:15 1 point 499. So if it goes 350 to 355, if it's a 11:15 2 tonnage model, there would be moaning and 11:16 3 groaning; but it wouldn't be a disaster. If it 11:16 4 went 350 to 400, probably it would be dropped. 11:16 5 It is not profitable then. 11:16 6 Q. Okay. 11:16 7 A. If it's 355 and we sell it at 499, 11:16 8 we're still making 29 points, approximately, a 11:16 9 little less, 28 and a half points. Generally, 11:16 10 that was considered to be acceptable especially 11:16 11 based on the fact that it's already in stock; 11:16 12 it's a programmed; it's running; the floor 11:16 13 salespeople were familiar with it. 11:16 14 That kind of price increase -- and 11:16 15 most manufacturers knew that. They could slip 11:16 16 in something like that because you're talking 11:16 17 about one-and-a-half-percent increase. 11:16 18 Q. Okay. And the same might hold true 11:16 19 if it went from 350 to 360, correct? 11:16 20 A. Yeah. There's a point where -- 11:17 21 MS. KERN: Same objection. Calls 11:17 22 for speculation. 11:17 23 THE WITNESS: Here's what's not 11:17 24 speculative. It's a group. Some people 11:17 25 would drop it. Some people would go to</p>

<p style="text-align: center;">98</p> <p>11:17 1 another model. Some people would raise 11:17 2 their price, and some people would keep 11:17 3 it.</p> <p>11:17 4 We didn't often have a hundred 11:17 5 percent uniformity in reaction to that 11:17 6 type of thing.</p> <p>11:17 7 BY MR. LAU:</p> <p>11:17 8 Q. But for a small -- for a small 11:17 9 increase in price from the vendor in your 11:17 10 experience -- and we're using 350 to 355 as an 11:17 11 example -- what would be a typical response 11:17 12 from the membership given a 499 price point?</p> <p>11:17 13 MR. DEW: Objection. Vague.</p> <p>11:17 14 THE WITNESS: You know, it's not 11:17 15 insignificant. But I would say, 11:17 16 generally, a retailer would accept that if 11:18 17 it was something that represented 20 or 25 11:18 18 percent of their total business. It's 11:18 19 just too hard to change. There isn't 11:18 20 something else that's so very similar.</p> <p>11:18 21 BY MR. LAU:</p> <p>11:18 22 Q. Let me make one final example, and 11:18 23 then we'll move on. Let's keep our price point 11:18 24 retail price 499. Let's keep our original 11:18 25 price charged by the vendor 350. Let's just</p>	<p>11:19 1 sell you up, because as you work up in the 11:19 2 line, it's more profitable. That's true 11:19 3 for manufacturers as well as retailers.</p> <p>11:19 4 So if it's 499 and its sole value 11:19 5 is to be thrown in the paper to bring 11:19 6 people into the store, \$1 is incidental. 11:19 7 But it's also true that if their stepping 11:19 8 into a model that they're going to sell at 11:19 9 \$630, which is a very odd price, but it's 11:20 10 easy to do on the floor because it's only 11:20 11 \$130, and look at all your getting. You 11:20 12 can make that one because you're not 11:20 13 bringing them in, because it's tucked 11:20 14 under \$600. You're bringing them in on 11:20 15 the 499 and selling them a better piece. 11:20 16 I can charge a dollar on that 11:20 17 piece, and I can keep the original price 11:20 18 the same. It was not uncommon for MARTA 11:20 19 to pay more to the manufacturer for 11:20 20 product than we charge the members.</p> <p>11:20 21 BY MR. LAU:</p> <p>11:20 22 Q. On a given product or overall? 11:20 23 A. Not overall. It doesn't work 11:20 24 overall. It works on a given product. So 11:20 25 something which is a foolish move -- I don't</p>
<p style="text-align: center;">99</p> <p>11:18 1 increase -- let's say the vendor increases its 11:18 2 price by \$1. Now, the vendor charges 351. 11:18 3 In your experience as executive 11:18 4 director of MARTA, how would the membership 11:18 5 react to its 499 retail price for that \$1 price 11:18 6 increase by the vendor?</p> <p>11:18 7 MS. KERN: Same objection. Calls 11:18 8 for speculation.</p> <p>11:18 9 THE WITNESS: I don't think there 11:18 10 would be much change. For a \$1 price 11:18 11 increase, however, it's unlikely the 11:19 12 members would ever see it. We -- we just 11:19 13 take a couple of models higher up in the 11:19 14 line which are relatively priced 11:19 15 insensitive.</p> <p>11:19 16 Price points are important for 11:19 17 advertised items. Price points are not 11:19 18 important for the selling floor. If you 11:19 19 come in because you saw an ad at 499, 11:19 20 almost all the time on the selling floor, 11:19 21 they'll try to sell you a \$599 or a \$699 11:19 22 or something better, something with more 11:19 23 features, something with more capacity, 11:19 24 something with more capability, better 11:19 25 features, better benefits. They'll try to</p>	<p>11:20 1 know many manufacturers that would just risk a 11:20 2 whole bunch of irritation for a dollar. But if 11:20 3 somebody were to do something like that, I 11:20 4 would protect the manufacturer. I'd just eat 11:20 5 the dollar, and I would stick it in -- put 50 11:20 6 cents on this one and 50 cents on that one and 11:20 7 make it go away.</p> <p>11:20 8 MR. LAU: You know, we've been 11:20 9 going for a little while. Why don't we 11:20 10 take a brief break? And then we'll 11:21 11 regroup. Sound good?</p> <p>11:21 12 THE VIDEOGRAPHER: The time is now 11:21 13 approximately 11:21 a.m. We're going off 11:21 14 the record. This is the end of Disc 11:21 15 No. 2.</p> <p>11:21 16 (Whereupon, a short break was 11:31 17 taken.)</p> <p>11:31 18 THE VIDEOGRAPHER: The time now is 11:31 19 approximately 11:31 a.m. we're back on 11:31 20 the record. This is the beginning of Disc 11:31 21 No. 3.</p> <p>11:31 22 BY MR. LAU:</p> <p>11:31 23 Q. Mr. Mann, do you have any 11:31 24 understanding as to the corporate structure of 11:31 25 MARTA while you were as executive director?</p>

<p style="text-align: center;">102</p> <p>11:31 1 MR. DEW: Objection. Vague.</p> <p>11:31 2 THE WITNESS: Yes.</p> <p>11:31 3 BY MR. LAU:</p> <p>11:31 4 Q. Who owned MARTA while you were executive director?</p> <p>11:31 5 MR. DEW: Objection. Calls for a legal conclusion.</p> <p>11:31 6 THE WITNESS: It was owned by the membership. It was a cooperative.</p> <p>11:31 7 BY MR. LAU:</p> <p>11:31 8 Q. Okay. You mentioned earlier that the -- when you began your tenure as executive director, there were perhaps 120 members; is that correct?</p> <p>11:32 9 A. Yes.</p> <p>11:32 10 Q. And so that was in June of 1999, thereabouts, correct?</p> <p>11:32 11 A. Correct.</p> <p>11:32 12 Q. And that when you left MARTA in early 2006, that that number had dropped?</p> <p>11:32 13 A. Yes.</p> <p>11:32 14 Q. What was the membership number -- membership figure as of the time you left</p> <p>11:32 15 MARTA?</p> <p>11:32 16 A. I'm not sure. It was around a</p>	<p>11:33 1 entered as an exhibit, as Exhibit 3247. (Whereupon, Exhibit No. 4731, Common Stock Reconciliation, was marked for identification.)</p> <p>11:33 2 BY MR. LAU:</p> <p>11:34 3 Q. Please read this document --</p> <p>11:34 4 COURT REPORTER: Just a second.</p> <p>11:34 5 MR. LAU: Oh.</p> <p>11:34 6 COURT REPORTER: Okay.</p> <p>11:34 7 BY MR. LAU:</p> <p>11:34 8 Q. Please read this document, and let me know once you've had a chance to do so.</p> <p>11:34 9 A. (Witness complies.)</p> <p>11:34 10 MR. DEW: I just note this copy has very small print that is hard to read.</p> <p>11:34 11 MR. LAU: It's as produced by MARTA, so that's the best we can -- that's the best we can do.</p> <p>11:34 12 THE WITNESS: Okay.</p> <p>11:34 13 BY MR. LAU:</p> <p>11:34 14 Q. Mr. Mann, do you recognize this document?</p> <p>11:34 15 A. I recognize the content.</p> <p>11:34 16 Q. And what about the content do you recognize?</p>
<p style="text-align: center;">103</p> <p>11:32 1 hundred. It could have been less.</p> <p>11:32 2 Q. Around a hundred, okay.</p> <p>11:32 3 And during -- during that time</p> <p>11:32 4 period, were there new members that joined?</p> <p>11:32 5 A. Yes.</p> <p>11:32 6 Q. And I assume that because if the</p> <p>11:32 7 overall number's less, obviously there were</p> <p>11:32 8 members who left during that time?</p> <p>11:32 9 A. We had more leave than came in.</p> <p>11:32 10 Q. Okay. So it's your understanding</p> <p>11:32 11 that the -- that the members owned MARTA; is</p> <p>11:33 12 that fair to say?</p> <p>11:33 13 A. Yes.</p> <p>11:33 14 Q. Okay. I'm going to show you a new</p> <p>11:33 15 document.</p> <p>11:33 16 MR. LAU: Just so everyone is</p> <p>11:33 17 clear, this document was entered as</p> <p>11:33 18 Exhibit 3247; but unfortunately, the copy</p> <p>11:33 19 we got back from the court reporter is</p> <p>11:33 20 very difficult to read. So I'm going to</p> <p>11:33 21 reenter this as a new exhibit.</p> <p>11:33 22 And if I could get the court</p> <p>11:33 23 reporter to mark this as 4731. It's a</p> <p>11:33 24 document that begins Bates No.</p> <p>11:33 25 CRT-MARTA-0043895. This was previously</p>	<p>11:35 1 A. It's a listing of dealers who were part of MARTA.</p> <p>11:35 2 Q. Okay. When you say "dealers that</p> <p>11:35 3 were part of MARTA," is that in reference to</p> <p>11:35 4 the active members on the first page?</p> <p>11:36 5 A. Well, on all three pages, I</p> <p>11:36 6 recognize most of the names as dealers who</p> <p>11:36 7 belonged to the group at one time or another.</p> <p>11:36 8 Q. Okay. Does this appear to be an</p> <p>11:36 9 accurate representation of MARTA's members as</p> <p>11:36 10 of September 30, 2005?</p> <p>11:36 11 A. It appears to be.</p> <p>11:36 12 Q. Does the document appear to be</p> <p>11:36 13 accurate?</p> <p>11:36 14 A. It appears to be accurate.</p> <p>11:36 15 Q. And does the document appear to be</p> <p>11:36 16 complete?</p> <p>11:36 17 A. Yes.</p> <p>11:36 18 Q. Why would members leave MARTA from</p> <p>11:37 19 time to time?</p> <p>11:37 20 MR. DEW: Objection. Calls for</p> <p>11:37 21 speculation.</p> <p>11:37 22 BY MR. LAU:</p> <p>11:37 23 Q. Don't guess. Just in your</p> <p>11:37 24 experience as executive director of MARTA.</p> <p>11:37 25</p>

<p style="text-align: center;">106</p> <p>11:37 1 A. Well, three reasons. They go out 11:37 2 of business. Some of these people just 11:37 3 shutter, their operation. They leave to go to 11:37 4 another group. And on occasion they may find 11:37 5 that their business has changed, and they're 11:37 6 not really getting anything out of MARTA; and 11:37 7 they don't wish to pay their dues anymore. 11:37 8 Q. And what were the dues to be a 11:37 9 member of MARTA? 11:37 10 A. You know, I don't remember. I'm 11:37 11 going to say it was around \$6,000. I'm close. 11:37 12 Q. Are -- 11:37 13 A. They change from time to time. 11:37 14 Q. Are those annual dues? 11:37 15 A. Yes. 11:38 16 Q. Okay. Now, MARTA, to your 11:38 17 understanding, was organized as a 11:38 18 not-for-profit, correct? 11:38 19 A. Correct. 11:38 20 Q. And to your understanding, it was 11:38 21 not the role of MARTA to generate a profit, 11:38 22 correct? 11:38 23 A. Correct. 11:38 24 Q. Can you ever think of an instance 11:38 25 where a distribution was made -- do you know</p>	<p>11:39 1 A. Travel expense. 11:39 2 Q. How did MARTA obtain revenue to pay 11:39 3 for these operating expenses? 11:39 4 A. We had the membership dues which 11:39 5 covered some of the expenses. And we took a 11:40 6 percentage out of our billing, which was 11:40 7 something like .23 percent. And we also had 11:40 8 income from the trade shows that we ran. 11:40 9 Q. But that second source, when you 11:40 10 took a percentage of the billing, is that in 11:40 11 reference to the so-called administrative fee? 11:40 12 Does that term sound familiar? 11:40 13 MR. DEW: Objection. I'm not sure 11:40 14 we know what administrative fee means yet. 11:40 15 BY MR. LAU: 11:40 16 Q. Mr. Mann, have you ever heard of 11:40 17 the term administrative fee before? 11:40 18 A. I think so. 11:40 19 Q. Okay. 11:40 20 A. That may be what that quarter 11:41 21 percent was called. 11:41 22 Q. Okay. Let me show you another 11:41 23 document. This is a document that's been 11:41 24 previously marked as Exhibit 3248. It's 11:41 25 entitled "MARTA overview." The Bates number is</p>
<p style="text-align: center;">107</p> <p>11:38 1 what a distribution is? 11:38 2 A. Yes. 11:38 3 Q. Can you -- what's your 11:38 4 understanding of the word distribution? 11:38 5 A. If at the end of the fiscal year we 11:38 6 had additional revenue and whatever our 11:38 7 immediate needs were, they were exceeded by the 11:38 8 revenue, then we could take that revenue and we 11:39 9 would split it out and distribute to the 11:39 10 members. 11:39 11 Q. Can you think of an instance where 11:39 12 a distribution was, in fact, made? 11:39 13 A. I'm -- I'm real sure we did that. 11:39 14 I can't remember the years. 11:39 15 Q. Okay. Can you think of years when 11:39 16 no distribution was made? 11:39 17 A. I think there were years that we 11:39 18 didn't make a distribution. 11:39 19 Q. Okay. Now, I take it MARTA had 11:39 20 operating expenses, correct? 11:39 21 A. We did. 11:39 22 Q. What were some of those operating 11:39 23 expenses? 11:39 24 A. Salaries, rent. 11:39 25 Q. Okay.</p>	<p>11:41 1 CRT-MARTA-0043911. 11:41 2 MR. DEW: Again, this is a pretty 11:42 3 sizeable document. Take all the time you 11:42 4 need to review it. 11:42 5 THE WITNESS: I wrote it. (Witness 11:44 6 complies.) Okay. 11:44 7 BY MR. LAU: 11:44 8 Q. Mr. Mann, do you recognize this 11:44 9 document? 11:44 10 A. Yes. 11:44 11 Q. And what is this document? 11:44 12 A. This is something that I used to 11:44 13 send to prospective dealers. 11:44 14 Q. And I think you mentioned as you 11:44 15 were reviewing this document, that you actually 11:44 16 drafted this document. Did I hear you 11:44 17 correctly? 11:44 18 A. Yes. 11:44 19 Q. Okay. And I take it when you 11:44 20 drafted this document. You did so in the 11:44 21 normal course of your role as executive 11:44 22 director for MARTA, correct? 11:44 23 A. Yes. 11:44 24 Q. Okay. You've reviewed the 11:44 25 document, correct?</p>

<p style="text-align: center;">110</p> <p>11:44 1 A. (Witness nodding.)</p> <p>11:44 2 Q. Does it appear to be accurate?</p> <p>11:44 3 A. Yes.</p> <p>11:44 4 Q. And does it appear to be complete?</p> <p>11:45 5 A. Yes.</p> <p>11:45 6 Q. Why did you make this document?</p> <p>11:45 7 A. This is designed to encourage</p> <p>11:45 8 people to leave whatever group they're with or</p> <p>11:45 9 if they're not with any group, to come to us.</p> <p>11:45 10 Q. Do you recall approximately when</p> <p>11:45 11 you drafted this document?</p> <p>11:45 12 A. End of 2004, beginning of 2005.</p> <p>11:45 13 Based on the growth rates that it shows, it's</p> <p>11:45 14 talking about growth in 2004; so this would</p> <p>11:45 15 have been to be 2005. However, documents like</p> <p>11:45 16 this go back to the beginning of my time with</p> <p>11:45 17 the group.</p> <p>11:45 18 Q. I know you quickly reviewed this</p> <p>11:45 19 document; but based on your recollection, do</p> <p>11:45 20 the principles discussed in this document, do</p> <p>11:45 21 they apply to your entire tenure as executive</p> <p>11:45 22 director of MARTA?</p> <p>11:45 23 A. They do.</p> <p>11:45 24 Q. Okay. Can you take a look at</p> <p>11:45 25 page 3, please?</p>	<p>11:47 1 and expenses, but that information was</p> <p>11:47 2 privileged only to the senior management. Our</p> <p>11:47 3 books were open to everybody in the group.</p> <p>11:47 4 Q. Take a look at page 16, please. Do</p> <p>11:47 5 you see that page?</p> <p>11:47 6 A. Yes.</p> <p>11:47 7 Q. This is a page entitled, "Buying</p> <p>11:47 8 Group Size." And it's a comparison of retail</p> <p>11:47 9 sales for MARTA, NATM, AVB, and Nationwide. Do</p> <p>11:47 10 you see that?</p> <p>11:47 11 A. Yes.</p> <p>11:47 12 Q. And we had a discussion earlier</p> <p>11:47 13 this morning about these buying groups. And If</p> <p>11:47 14 I understood your testimony earlier, you viewed</p> <p>11:48 15 these other buying groups as some of MARTA's</p> <p>11:48 16 competitors, correct?</p> <p>11:48 17 A. In the sense that they were trying</p> <p>11:48 18 to take our members to join their groups, yes.</p> <p>11:48 19 Q. Fair enough.</p> <p>11:48 20 Now, there's information here on</p> <p>11:48 21 page 16 concerning the retail sales for these</p> <p>11:48 22 other buying groups. Do you see that?</p> <p>11:48 23 A. Yes.</p> <p>11:48 24 Q. Where did you obtain this</p> <p>11:48 25 information?</p>
<p style="text-align: center;">111</p> <p>11:45 1 A. (Witness complies.)</p> <p>11:46 2 Q. Do you see where it says, MARTA</p> <p>11:46 3 fundamentals, the last sentence? It reads as</p> <p>11:46 4 follows, quote, "Different from most such</p> <p>11:46 5 associations, the cooperative exists solely to</p> <p>11:46 6 promote profitability and capability of its</p> <p>11:46 7 owners, the retail stores themselves, end</p> <p>11:46 8 quote." Do you see that sentence?</p> <p>11:46 9 A. Yes.</p> <p>11:46 10 Q. Well, first, was that an accurate</p> <p>11:46 11 statement of MARTA?</p> <p>11:46 12 A. Yes.</p> <p>11:46 13 Q. Okay. And what were you trying to</p> <p>11:46 14 express with that sentence? What does that</p> <p>11:46 15 sentence mean?</p> <p>11:46 16 MR. DEW: Again, vague. Objection</p> <p>11:46 17 vague.</p> <p>11:46 18 BY MR. LAU:</p> <p>11:46 19 Q. Do you understand my question,</p> <p>11:46 20 Mr. Mann?</p> <p>11:46 21 A. Yes. Of the different groups that</p> <p>11:46 22 a retailer could belong to, there was only one,</p> <p>11:46 23 NATM, which was pretty much a closed shop, that</p> <p>11:46 24 shared its financial information with the</p> <p>11:46 25 members. The other groups had revenue sources</p>	<p>11:48 1 A. Trade publication.</p> <p>11:48 2 Q. Okay. Can you give me an example,</p> <p>11:48 3 just any one trade publication?</p> <p>11:48 4 A. Twice magazine.</p> <p>11:48 5 Q. Say that again. I didn't</p> <p>11:48 6 understand.</p> <p>11:48 7 A. Twice, T-W-I-C-E, magazine is a</p> <p>11:48 8 publication for the industry.</p> <p>11:48 9 Q. And if you look on pages 17 and 18,</p> <p>11:48 10 there's also information about the number of</p> <p>11:48 11 members in each of these buying groups and the</p> <p>11:49 12 average member size. Do you see that?</p> <p>11:49 13 A. Yes.</p> <p>11:49 14 Q. And where was this information</p> <p>11:49 15 obtained?</p> <p>11:49 16 A. The same way. It was generally</p> <p>11:49 17 common knowledge.</p> <p>11:49 18 Q. Okay. Look to page 19, please,</p> <p>11:49 19 entitled, "MARTA's Strengths." And the</p> <p>11:49 20 subtitle reads, quote, "Brand and product</p> <p>11:49 21 decisions made by member merchants," end quote.</p> <p>11:49 22 Do you see that?</p> <p>11:49 23 A. Yes.</p> <p>11:49 24 Q. Now, by this, you were trying to</p> <p>11:49 25 express the concept that it was the members who</p>

<p style="text-align: center;">114</p> <p>11:49 1 decided what products to buy through MARTA?</p> <p>11:49 2 MR. DEW: Objection --</p> <p>11:49 3 Q. -- correct?</p> <p>11:49 4 MR. DEW: -- to form. I'm sorry.</p> <p>11:49 5 I didn't mean to cut you off. Objection</p> <p>11:49 6 to form.</p> <p>11:49 7 THE WITNESS: In a sense. Decision</p> <p>11:49 8 oftentimes was one that somebody had to</p> <p>11:49 9 make, and I was the executive director.</p> <p>11:49 10 But it was guided by the members.</p> <p>11:50 11 BY MR. LAU:</p> <p>11:50 12 Q. Well, let's take a step back. I</p> <p>11:50 13 understand what you're saying.</p> <p>11:50 14 So as -- as executive director, you</p> <p>11:50 15 would negotiate with vendors, correct?</p> <p>11:50 16 A. Yes.</p> <p>11:50 17 Q. And part of those negotiations were</p> <p>11:50 18 concerning specific products that the vendors</p> <p>11:50 19 would sell, correct?</p> <p>11:50 20 A. Yes.</p> <p>11:50 21 Q. And part of those negotiations</p> <p>11:50 22 would concern the price at what those vendors</p> <p>11:50 23 would sell those specific products for a given</p> <p>11:50 24 period of time, correct?</p> <p>11:50 25 A. Yes.</p>	<p>11:51 1 Q. What about if the member chose to</p> <p>11:51 2 use central billing, would that change the</p> <p>11:51 3 equation?</p> <p>11:51 4 MR. DEW: Objection. Confusing.</p> <p>11:51 5 THE WITNESS: I don't know of many</p> <p>11:51 6 instances, maybe a handful, that people</p> <p>11:51 7 would not buy through central billing</p> <p>11:51 8 because our prices were better than they</p> <p>11:52 9 could get on their own.</p> <p>11:52 10 BY MR. LAU:</p> <p>11:52 11 Q. Okay. When you -- take a step</p> <p>11:52 12 back. When you negotiated with the vendors on</p> <p>11:52 13 prices, would it be for a discrete category of</p> <p>11:52 14 products or would it be for every conceivable</p> <p>11:52 15 product sold by the vendor?</p> <p>11:52 16 A. What? I'm sorry. Your beginning</p> <p>11:52 17 was when I negotiated --</p> <p>11:52 18 Q. With the vendors.</p> <p>11:52 19 A. Right.</p> <p>11:52 20 Q. Would you negotiate prices for a</p> <p>11:52 21 discrete set of products or would you negotiate</p> <p>11:52 22 prices for every single product sold by that</p> <p>11:52 23 vendor?</p> <p>11:52 24 A. Both. There were some elements of</p> <p>11:52 25 the program which applied to everything that</p>
<p style="text-align: center;">115</p> <p>11:50 1 Q. Have you heard of the word</p> <p>11:50 2 "program" before used in relation to MARTA?</p> <p>11:50 3 A. Yes.</p> <p>11:50 4 Q. What's a program?</p> <p>11:50 5 A. It's a chain of discounts which</p> <p>11:50 6 lowers the price beyond the invoice price.</p> <p>11:50 7 Q. Okay. How long would these</p> <p>11:50 8 programs last?</p> <p>11:50 9 A. Some were short duration; others</p> <p>11:50 10 would last all year.</p> <p>11:50 11 Q. Okay. When a member decided to</p> <p>11:51 12 make a purchase through MARTA, would it be</p> <p>11:51 13 through these so-called programs?</p> <p>11:51 14 A. Through?</p> <p>11:51 15 Q. Yes.</p> <p>11:51 16 A. No, that's not the --</p> <p>11:51 17 Q. Okay. How would a member make a</p> <p>11:51 18 purchase through MARTA? What is your</p> <p>11:51 19 understanding of that?</p> <p>11:51 20 A. You place the order with the</p> <p>11:51 21 manufacturer.</p> <p>11:51 22 Q. Okay. Could a member purchase any</p> <p>11:51 23 product produced by a vendor or just those that</p> <p>11:51 24 you had negotiated a price for?</p> <p>11:51 25 A. Any product they wished.</p>	<p>11:52 1 the vendor sold. Oftentimes these would</p> <p>11:52 2 include programs like cash discount for prompt</p> <p>11:52 3 payment, volume rebate for attaining certain</p> <p>11:52 4 level either in units or in dollars. There</p> <p>11:52 5 were category discounts to promote the growth</p> <p>11:53 6 of certain products.</p> <p>11:53 7 So at the same time, we were much</p> <p>11:53 8 more concerned with the key models than just</p> <p>11:53 9 driving all prices to be the same because we</p> <p>11:53 10 didn't have any intention to buy everything</p> <p>11:53 11 they made. We just wanted to buy certain</p> <p>11:53 12 things.</p> <p>11:53 13 So there were certain models that</p> <p>11:53 14 we worked very hard to get the right price</p> <p>11:53 15 oftentimes to make the price point or to make</p> <p>11:53 16 it competitive with something else that was</p> <p>11:53 17 being offered.</p> <p>11:53 18 Q. Now, if a member -- if a dealer was</p> <p>11:53 19 a member of MARTA, did that obligate the member</p> <p>11:53 20 to make all of its purchases through MARTA?</p> <p>11:53 21 A. It did not. And none of them did.</p> <p>11:53 22 Q. Okay. So the decision whether to</p> <p>11:53 23 purchase a product through MARTA or elsewhere,</p> <p>11:53 24 that was the member's decision, correct?</p> <p>11:54 25 A. To some extent. It was also our</p>

<p style="text-align: center;">118</p> <p>11:54 1 decision.</p> <p>11:54 2 Q. Why do you say that?</p> <p>11:54 3 A. Billing involves some overhead, some administrative costs, and some risk. If the vendor was going to charge the same price whether we did the billing or not, why would we do the billing? Then they can just buy it on their own.</p> <p>11:54 9 The reason that we got favorable pricing and programs was because the manufacturer had one place to send the bill to. They knew they'd get paid even if the dealer went out of business, and they knew that it was a tacit endorsement from the group for that brand. So we could usually extract some benefit.</p> <p>11:54 17 But many companies didn't bill, and some that once did stopped, especially in the early days because things were kind of a mess in the early days.</p> <p>11:55 21 Q. Take a look at page 20 of the document, please. "MARTA's strengths" and in the subtitle, "rapid dissemination of program data to members." Do you see that?</p> <p>11:55 25 A. Yes.</p>	<p>11:57 1 described as a nonexclusive purchasing agent?</p> <p>11:57 2 A. I don't recall that term.</p> <p>11:57 3 Q. Let me show you another document. I'm going to show you a document that's been previously marked as Exhibit 3243. The first few pages of the document are entitled, "MARTA Cooperative of America, Inc. Cooperative Plan"; and the same document also includes the bylaws of MARTA Cooperative.</p> <p>11:57 10 Please take a look at this document. We're just going to focus, Mr. Mann, on the first page.</p> <p>11:58 13 A. Good.</p> <p>11:58 14 MR. DEW: Again, I would point out this is quite large; and to the extent you feel you need to look at the document in order to testify about it, please take the time to do so.</p> <p>11:58 19 THE WITNESS: Well, anyway, if I need to take a look at more, what on the first page are you curious about?</p> <p>11:58 22 BY MR. LAU:</p> <p>11:58 23 Q. Paragraph A entitled, "Company as Purchasing Agent," that's the paragraph I want to focus on; so if you could focus your</p>
<p style="text-align: center;">119</p> <p>11:55 1 Q. Okay. Do you see the third bullet point stating, quote, "Shopping reports for Best Buy, Circuit City, Lowe's, Sears, and Home Depot go to the membership biweekly along with periodic competitive ad data or scans," end quote. Do you see that?</p> <p>11:55 7 A. Yes.</p> <p>11:55 8 Q. That's an accurate sentence, correct?</p> <p>11:55 10 A. At the time it was.</p> <p>11:55 11 Q. Okay. Did that change either before or after this report was generated?</p> <p>11:55 13 A. Well, before we had Pat Goff's shopper sending in those nice little reports, we didn't have something biweekly. For the period of time that I was able to get those reports, I sent them out; and then when she quit or retired or Pat lost interest or closed the store or whatever happened, then we didn't do it anymore. The periodic information was just that, periodic and came catch as catch can.</p> <p>11:56 23 Q. Have you ever seen MARTA's bylaws?</p> <p>11:56 24 A. Yes.</p> <p>11:57 25 Q. Have you ever seen or heard MARTA</p>	<p>11:58 1 attention on that paragraph, please.</p> <p>11:58 2 A. (Witness complies.) Okay.</p> <p>11:58 3 Q. Mr. Mann, does reading this paragraph refresh your recollection that MARTA was a nonexclusive purchasing agent?</p> <p>11:59 6 A. I infer from this it means that you're not forced to buy that manufacturer's product from us; but it goes on to say if you do buy it and if you place an order for it, you're bound to bring it in.</p> <p>11:59 11 Q. Do you have any -- so that goes to the nonexclusive part of that. Do you have any understanding as to what the purchasing agent part of that sentence refers to just based on your own understanding as executive director of MARTA?</p> <p>11:59 17 A. Well, in my view, it's not exactly accurate. I viewed what MARTA did to be much more akin to what a floor plan company does.</p> <p>11:59 20 Q. How so?</p> <p>11:59 21 A. We were a financial organization, and our main job was to use our cooperative administrative purchasing power to get better deals for the dealer; but we didn't receive the merchandise. We didn't have a store.</p>

<p style="text-align: center;">122</p> <p>12:00 1 And except for a brief period, we 12:00 2 didn't even have a warehouse. Our job was to 12:00 3 help the members get better pricing, net 12:00 4 pricing, programs, sometimes other advantages 12:00 5 like availability, because we operated as an 12:00 6 entity.</p> <p>12:00 7 At one time MARTA was the second 12:00 8 largest Toshiba dealer in the country, best by 12:00 9 being the largest; but that was only made 12:00 10 possible because of the way we had to do the 12:01 11 billing. Had the members purchased on their 12:01 12 own, they would have been all splintered out; 12:01 13 and I don't think the largest MARTA member 12:01 14 would have been in the top 50 Toshiba.</p> <p>12:01 15 Q. You said that except for a brief 12:01 16 period MARTA had no warehouses. During what 12:01 17 period did MARTA have a warehouse?</p> <p>12:01 18 A. I don't know when it started; but 12:01 19 when I was brought in, they had a warehouse in 12:01 20 Chicago.</p> <p>12:01 21 Q. And what was the purpose of that 12:01 22 Chicago warehouse?</p> <p>12:01 23 A. I speak now only from my 12:01 24 understanding of what was explained to me. So, 12:01 25 you know, I didn't make the decision. But it's</p>	<p>12:02 1 counsel on the phone who has some very 12:02 2 brief questions for you. 12:02 3 (Discussion held off the record.) 12:03 4 MS. KERN: So this Sylvie Kern. I 12:03 5 may have a couple of questions, but can we 12:04 6 just take a quick break? 12:04 7 MR. LAU: Sure, that's fine. Why 12:04 8 don't we take a five-minute break. Then 12:04 9 we can wrap this up. 12:04 10 THE VIDEOGRAPHER: The time is 12:04 11 12:04 p.m. We're going off the record. 12:04 12 (Whereupon, a short break was 10:10 13 taken.) 12:11 14 THE VIDEOGRAPHER: The time now is 12:11 15 12:11 p.m., and we're back on the record. 12:11 16 MS. KERN: I have no further 12:11 17 questions. 12:11 18 MR. DEW: Who was that speaking 12:11 19 please? 12:11 20 MS. KERN: This is Sylvie Kern. 12:11 21 MR. DEW: Thank you. 12:11 22 MR. LAU: Any questions from anyone 12:11 23 else? 12:11 24 MS. STOCK: This is Sarah Stock 12:11 25 representing the Hitachi defendants for</p>
<p style="text-align: center;">123</p> <p>12:01 1 often thought that if you have a place to 12:01 2 source stuff, you can make a great buy and 12:01 3 bring it even if you don't have somebody 12:01 4 willing to take it.</p> <p>12:01 5 If I can move 2000 of these 12:01 6 tomorrow, well, it will take my a while to get 12:01 7 orders. I don't have a while. Buy them now or 12:02 8 I'll sell them someplace else. Oh, bring them 12:02 9 in the warehouse. We'll sell them. The 12:02 10 trouble is it's too volatile a business, and it 12:02 11 would be a good buy at the time. Then you find 12:02 12 out that the reason it was a good buy was there 12:02 13 was something better in the wings, and now 12:02 14 you're stuck with the product.</p> <p>12:02 15 And when I came to the company, 12:02 16 there was inventory that had been lingering in 12:02 17 that warehouse for a while. So we liquidated 12:02 18 it and shut down and eliminated the overhead.</p> <p>12:02 19 Q. When was the warehouse shut down?</p> <p>12:02 20 A. I'm going to guess within a year of 12:02 21 my arrival, so maybe the middle of 2000.</p> <p>12:02 22 MR. LAU: Mr. Mann, thank you for 12:02 23 your time today. I have no further 12:02 24 questions.</p> <p>12:02 25 I believe we have one defense</p>	<p>12:11 1 Kirkland & Ellis; and, Mr. Mann, I have 12:11 2 only a few questions for you about a 12:11 3 document that we will mark as exhibit -- 12:11 4 what is the next exhibit in line?</p> <p>12:11 5 MR. LAU: 4732. 12:11 6 (Whereupon, Exhibit No. 4732, 12:11 7 E-mail, was marked for identification.) 12:12 8 MS. STOCK: For the record, Exhibit 12:12 9 4732 bears the Bates No. 12:12 10 CRT-MARTA-0041853.</p> <p>12:12 11 12:12 12 EXAMINATION BY 12:12 13 MS. STOCK: 12:12 14 Q. Mr. Mann, please take your time to 12:12 15 review this document; but I'm only going to ask 12:12 16 you about the page ending in Bates No. 41901. 12:13 17 And please let me know when you're on that 12:13 18 page.</p> <p>12:13 19 A. The page that you're referencing, 12:13 20 is that the bulletin number? Oh, I see. Never 12:13 21 mind. 41971. Okay. I'm working my way back 12:13 22 to it.</p> <p>12:13 23 Q. Sorry. It's 41901 is the last 12:13 24 three numbers.</p> <p>12:13 25 MR. LAU: Sarah, is this the</p>

<p style="text-align: center;">126</p> <p>12:13 1 document that reads in the subject line, 12:13 2 "MARTA Bulletin E247JVC twin offer," at 12:13 3 the top? I think he's having a hard time 12:14 4 finding the number.</p> <p>12:14 5 MS. STOCK: Yes.</p> <p>12:14 6 THE WITNESS: No. I've got it.</p> <p>12:14 7 MR. LAU: Oh, okay.</p> <p>12:14 8 THE WITNESS: I'm just reading</p> <p>12:14 9 through it. Okay.</p> <p>12:14 10 BY MS. STOCK:</p> <p>12:14 11 Q. Do you recognize this as an e-mail</p> <p>12:14 12 you sent to marta@martacoop.com on October 9,</p> <p>12:15 13 2000?</p> <p>12:15 14 A. It appears to be the type of thing</p> <p>12:15 15 I would have sent out.</p> <p>12:15 16 Q. That e-mail has a subject line,</p> <p>12:15 17 MARTA Bulletin E247JYT [sic] twin offer,</p> <p>12:15 18 correct?</p> <p>12:15 19 A. JVC twin offer.</p> <p>12:15 20 Q. Yes. Correct? Was this e-mail</p> <p>12:15 21 sent in the ordinary course of business?</p> <p>12:15 22 A. Yes.</p> <p>12:15 23 Q. And then I want to direct your</p> <p>12:15 24 attention to the last full paragraph in the</p> <p>12:15 25 e-mail. It's the second to the last e-mail,</p>	<p style="text-align: center;">128</p> <p>12:16 1 A. Yes.</p> <p>12:16 2 MS. STOCK: Okay. Thank you,</p> <p>12:16 3 Mr. Mann. I have no further questions.</p> <p>12:16 4 THE WITNESS: You're welcome.</p> <p>12:17 5 MR. DEW: I have no questions.</p> <p>12:17 6 THE VIDEOGRAPHER: Okay. Thank you</p> <p>12:17 7 this concludes the July 25, 2014,</p> <p>12:17 8 videotaped deposition of Warren Mann. The</p> <p>12:17 9 time is approximately 12:17 p.m. And we</p> <p>12:17 10 are going off the record and finished for</p> <p>12:17 11 the day. There are three DVDs of this</p> <p>12:17 12 deposition.</p> <p>13 (The witness is excused.)</p> <p>14 (Videotaped deposition of WARREN</p> <p>15 MANN concluded at 12:17 p.m.)</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: center;">127</p> <p>12:15 1 the last full paragraph. Are you there?</p> <p>12:15 2 A. Yes.</p> <p>12:15 3 MR. DEW: Objection. I'm not sure</p> <p>12:15 4 we can tell exactly which paragraph you</p> <p>12:15 5 mean.</p> <p>12:15 6 BY MS. STOCK:</p> <p>12:15 7 Q. It begins with the word, "The</p> <p>12:15 8 second model is the AV-27115.</p> <p>12:16 9 A. Yes.</p> <p>12:16 10 Q. And would you please read aloud the</p> <p>12:16 11 second sentence in that paragraph which begins</p> <p>12:16 12 with, "It can be."</p> <p>12:16 13 A. "The ultimate escape piece at 299</p> <p>12:16 14 with a premium brand name," parentheses, "(ala</p> <p>12:16 15 Hitachi or Sony)," end of parentheses, period.</p> <p>12:16 16 Q. In this sentence you describe both</p> <p>12:16 17 Hitachi and Sony as premium brand names,</p> <p>12:16 18 correct?</p> <p>12:16 19 A. Correct.</p> <p>12:16 20 Q. Did your description of Hitachi and</p> <p>12:16 21 Sony as premium name accurately reflect your</p> <p>12:16 22 view at the time of this e-mail --</p> <p>12:16 23 A. Yes.</p> <p>12:16 24 Q. -- that Hitachi and Sony were</p> <p>12:16 25 premium brand names for television?</p>	<p style="text-align: center;">129</p> <p>1 C E R T I F I C A T E</p> <p>2</p> <p>3</p> <p>4 I, SUZANNE J. STOTZ, a Certified</p> <p>5 Court Reporter, and Notary Public in and for</p> <p>6 the State of New York, do hereby certify that</p> <p>7 the foregoing is a true and accurate transcript</p> <p>8 of the stenographic above-captioned matter.</p> <p>9</p> <p>10</p> <p>11</p> <p>12 SUZANNE J. STOTZ, C.C.R.</p> <p>13 My Commission Expires October 17, 2017</p> <p>14</p> <p>15</p> <p>16 DATED: JULY 28, 2014</p> <p>17</p> <p>18</p> <p>19 NOTE: THE CERTIFICATE APPENDED TO THIS</p> <p>20 TRANSCRIPT DOES NOT APPLY TO ANY REPRODUCTION</p> <p>21 OF THE SAME BY ANY MEANS, UNLESS UNDER THE</p> <p>22 DIRECT CONTROL AND/OR DIRECTION OF THE</p> <p>23 CERTIFYING COURT REPORTER.</p> <p>24</p> <p>25</p>

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1 ERRATA SHEET

2 I have read my testimony in the foregoing
3 transcript and believe it to be true and
4 correct to the best of my knowledge and belief
5 with the following changes:

6 PAGE LINE CHANGE

7 _____
8 _____
9 _____
10 _____
11 _____
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17 _____
18 _____

19 WITNESS SIGNATURE DATE

20

21 Sworn and subscribed to before me this
22 ____ day of _____, 2014.

23

24 Notary Public of the

25 State of _____.

A	adopt 92:9 ads 76:14 86:25 89:7 advanced 89:25 advantage 21:25 28:4 33:14 advantages 18:24 122:4 advertise 49:2 advertised 66:19 99:17 advertising 47:16 49:1,9 90:1 91:25 advising 75:19 affiliated 6:20 affiliation 16:3 affiliations 16:7 afternoon 10:18 43:2 agent 120:1,24 121:5,13 ago 67:24 agree 15:7 55:25 agreement 15:16,20 ah 88:24 ahead 61:3 67:10 airfare 39:2 akin 121:19 al 49:14 61:25 62:10 ala 127:14 alau 2:19 albany 2:8 albie 2:21 6:24 8:9 albuquerque 32:19 align 17:8 alliance 14:2,11 18:4 aloud 127:10 america 7:17 120:7 american 12:25 36:4 americas 1:18 6:6 amount 57:24 88:5 analysis 39:10 40:18 41:10,15 51:5,9 83:8 ancient 8:21	angeles 85:15,19 annual 65:18 106:14 answer 9:24 10:6 36:3 59:2 61:3 67:14 77:25 80:2 answered 54:22 answering 58:5 answers 10:8 93:17 antitrust 1:5 6:8 anybody 43:20 46:14 55:17 56:20 73:24 84:14 anymore 106:7 119:20 anyway 19:23 52:3 70:2 120:19 apologize 52:22 app 85:18 appear 18:17 59:6,9 60:1 61:13,14,16 61:21 78:5,8 80:7 80:10 105:9,13,16 110:2,4 appearing 90:25 appears 56:23 61:25 75:24 105:12,15 126:14 appended 129:19 appliance 30:6 31:12 58:15 87:6 91:21 appliances 38:18 42:19,20 58:11 applicable 37:4 applied 116:25 apply 110:21 129:20 appreciate 62:20 approximately 6:3 44:16 49:22 50:4 69:14 71:3 72:10 97:8 101:13,19 110:10 128:9 area 84:16 85:1 arent 19:5 arguments 9:23 arizona 32:19 76:6 81:15 85:1	arrival 123:21 ascertain 54:8,12 asia 7:18 aside 59:13 78:13 asked 54:21 66:4,6 72:9 asking 41:17 55:25 56:1 63:24 68:4 73:16 asset 91:16 assistant 37:2 associated 39:23 association 12:1 35:19 36:5,7 37:10 associations 37:6 111:5 assume 103:6 attach 60:6 attached 5:19 attaining 117:3 attend 38:14,15 attended 36:24 37:11 attention 77:4 121:1 126:24 attorney 9:21 10:4,5 15:24 50:12 attorneys 2:4,14 3:5 3:15 4:5 6:18 9:22 10:6 15:21 audio 91:23 av27115 127:8 availability 122:5 avb 14:7,8 18:4,4 20:15 21:21 26:19 29:1 32:3 112:9 ave 3:17 avenue 1:18 6:5 average 21:18 113:12 awakened 90:23 aware 40:21
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